

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,

Plaintiffs,

vs.

Case No. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,

Defendants.

VIDEO DEPOSITION OF SHANE TUELL
TAKEN ON BEHALF OF THE DEFENDANTS
ON APRIL 10, 2009, BEGINNING AT 8:39 A.M.
IN TULSA, OKLAHOMA

APPEARANCES

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*No Exhibit 8

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STIPULATIONS

It is stipulated that the deposition of
SHANE TUELL may be taken on the 10th day of April,
2009, pursuant to agreement and in accordance with the
Federal Rules of Civil Procedure before Susan K.
McGuire, CSR, RPR.

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1 VIDEOGRAPHER: This is Tape One to the
2 videotaped deposition of Shane Tuell in the matter of
3 State of Oklahoma versus Tyson Foods being heard
4 before the District Court for the Northern District of
5 Oklahoma, case file 05-CV-00329-GFK SAJ.

6 This deposition is being held at 100 West
7 Fifth Street in Tulsa, Oklahoma on April 10th, 2009.
8 We're on the record at 8:39 p.m.

9 My name is Gabriel Pack and I'm the
10 videographer. The court reporter is Susan McGuire.
11 Counsel, would you please introduce yourselves and
12 affiliations and the witness will be sworn.

13 MR. WALKER: Todd Walker with Faegre and
14 Benson, representing the Cargill defendants.

15 MR. MIRKES: Craig Mirkes, McDaniel, Hixon,
16 Longwell & Acord, representing Peterson Farms.

17 MR. CHADICK: Buddy Chadick with the Bassett
18 firm, representing the Georges.

19 MR. WOMACK: Michael Womack with Riggs,
20 Abney, representing the State of Oklahoma.

21 VIDEOGRAPHER: The court reporter will now
22 swear in the witness.

23 * * * * *

24 WHEREUPON,

25 SHANE TUELL

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1 after having been first duly sworn, deposes and says
2 in reply to the questions propounded as follows,
3 to-wit:

4 DIRECT EXAMINATION

5 BY MR. WALKER:

6 Q. Sergeant Tuell, I'm Todd Walker, we met just
7 a moment ago.

8 A. Yes, we did.

9 Q. We're here today to take your deposition.
10 Have you ever been deposed before?

11 A. Yes.

12 Q. How many times?

13 A. Several. I've worked as a homicide major
14 crimes detective and so I've.

15 Q. You're familiar with the process?

16 A. Done a few of these, yes, sir.

17 Q. I'd like to review just a few of the
18 important things.

19 A. Sure.

20 Q. Procedurally, very first of which I will say
21 is that we need to be careful not to talk over one
22 another and because we have a court reporter here
23 taking down everything that's said, it becomes pretty
24 difficult if we're both speaking at the same time. So
25 I would ask that through the course of our question

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1 and answer session today, that you do the best you can
2 to wait until I have completed my question before you
3 begin delivering your answer, and likewise I need to
4 do the best I can to not ask a question while you're
5 still answering with previous one; okay?

6 A. Okay.

7 Q. The other important thing for the purposes
8 of the record is to be sure that you deliver an
9 audible response, yes, no, not nods or shakes of the
10 head, those kinds of things; okay?

11 A. Okay.

12 Q. If at any time you need to take a break,
13 glad to do so, the only thing I ask is if I've got a
14 question pending that you go ahead and deliver your
15 answer before we take a break; all right?

16 A. Okay.

17 Q. And I may ask, although unintended,
18 questions that are confusing or don't make any sense
19 to you. If I do that and you don't understand a
20 question, please let me know, don't answer it. Don't
21 try to answer it. Just tell me so and I'll try and
22 rephrase it in a way that you understand; okay?

23 A. Okay.

24 Q. Because if you do give me an answer I'm
25 going to assume that you understood the question; all

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1 right?

2 A. All right.

3 Q. The court reporter has marked as Exhibit 1 a
4 Subpoena, do you recognize that document?

5 A. Yes, I was in receipt of a Subpoena
6 commanding me to come here today at 8:30.

7 Q. And that's the Subpoena; correct?

8 A. It is.

9 Q. The Subpoena asked for you to bring any and
10 all documents or electronic information that is in
11 your possession that relates to this case. Did you
12 notice that?

13 A. I did.

14 Q. Did you bring any documents with you today?

15 A. I brought two today.

16 Q. Is that all of the information that you had
17 in your possession relevant to this case?

18 A. Yes.

19 Q. Okay. Can I take a look at those, please?

20 A. Yes, you may.

21 Q. And would you please tell the Court what
22 those documents are?

23 A. Each document is a 1099 form from
24 Lithochimeia, Incorporated showing that in 2005 I was
25 employed by them to do work and in 2006 I was employed

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1 by them to do some work.

2 Q. Okay. Are those the only two years in which
3 you did work on this case?

4 A. Apparently so. It's been a while ago, so I
5 apologize, but yes, these are the only two that I
6 could locate.

7 Q. Okay. We'll probably make copies of those
8 at a break and make them into an exhibit just for the
9 record; okay?

10 A. Sure.

11 Q. And then you'll be able to take those back
12 with you.

13 What did you do, if anything, to prepare for
14 your deposition today?

15 A. I believe it was March 31, I spoke briefly
16 with Rick Gerron and it was basically just to say make
17 sure to bring the 1099 forms and if I had anything
18 else to bring it forward. It was very basic
19 information and very short in duration.

20 Q. Is that a telephone call or an in person
21 meeting?

22 A. It was an in person meeting.

23 Q. Mr. Gerron being an attorney for the State
24 of Oklahoma?

25 A. Yes, sir.

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1 Q. How long did your meeting with Mr. Gerron
2 last?

3 A. Approximately 15 minutes.

4 Q. I imagine that you covered more than just
5 the idea of bringing your 1099 in the course of 15
6 minutes?

7 A. You're correct.

8 Q. What else did you talk about?

9 A. It was just to make sure to be honest,
10 covering information such as that, to see if I'd ever
11 been deposed before, to give me some information on
12 that, just basic information to kind of prepare me for
13 today.

14 I had no documents to review at that time,
15 any photographs to review at this time, anything of
16 that nature.

17 Q. Mr. Gerron didn't provide you with any
18 documents to look at?

19 A. No, sir.

20 Q. Did you meet alone with him or were there
21 others in the room, as well?

22 A. It was alone with him.

23 Q. Other than that March 31 meeting, did you
24 have any communications with anybody about this case
25 to prepare for your deposition?

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1 A. Not to prepare for the deposition, no, sir.

2 Q. Several investigators, retired Tulsa police
3 officers, active officers, have been deposed this
4 week, are you aware of that?

5 A. I am.

6 Q. Okay. Pretty much other than what we're
7 doing today, the remainder of the investigative team
8 that you are aware, worked on this case; right?

9 A. Correct.

10 Q. Did you speak -- well, actually, I don't
11 want to limit it to just speaking, there's all kinds
12 of ways that we communicate these days. You guys
13 probably have things in your police cars that I don't
14 even know what they are, but ways to communicate,
15 people text, people use, you know, the old fashioned
16 telephone, all kinds of ways and this question is
17 intended to capture any method of communication.

18 I'd like to know if you've communicated with
19 any of the other investigators in this case about
20 their depositions.

21 A. I have, but not about their depositions.

22 Q. About some, about, have you communicated
23 with them about this case?

24 A. I communicated with Steve Steele who just
25 wanted to make sure that I didn't miss today and he

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1 also gave me the information to contact Rick Gerron.

2 And then I contacted Kirk Gardner because he
3 couldn't be reached by Steve Steele and Steve just
4 wanted me to make sure to let him know to either
5 contact Rick Gerron or to make sure to bring any forms
6 with him that he had.

7 Q. Was there anything more to your
8 understanding of why Mr. Steele was trying to reach
9 Mr. Gardner?

10 A. Steve Steele kind of organized all of us to
11 go and do what we did for the State. And so, I
12 believe Steve just took it upon his shoulders to make
13 sure that everyone he had organized did make this
14 deposition and did talk with Mr. Gerron if they needed
15 to, prior to coming.

16 Q. And what was the means of communication that
17 was being used to coordinate these -- be sure people
18 showed up and those kinds of things?

19 A. Steve's my father-in-law, so I don't recall
20 if he came by the house to, in general conversation,
21 brought it up or if he'd called me. Kirk Gardner, I
22 actually called him by phone.

23 Q. And these are communications that happened
24 this week?

25 A. The first of April, around the first of

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1 April, and because like I said, I went March 31st to
2 talk to Mr. Gerron, so I'd spoke with Steve Steele
3 prior to, shortly prior to March 31st.

4 Q. What's the most recent communication that
5 you had with any of the investigators involved in this
6 case, anything today?

7 A. No, no, not today.

8 Q. Anything yesterday?

9 A. No. I talk to these individuals on a
10 regular basis, but specifically about this, no.

11 Q. Okay. How about communications of any sort
12 with any of the lawyers in this case, particularly
13 including Mr. Gerron?

14 A. Mr. Gerron was on March 31st, and then
15 briefly on a personal nature on April 1st. But
16 nothing involving the deposition.

17 Q. Mr. Gerron didn't talk with you yesterday?

18 A. Oh, yes, he did. Yes, he did. I apologize.

19 Q. I thought he might.

20 A. Yeah. He did because I'd let them know that
21 I had child care issues and he said we can't promise
22 anything, but he wanted to know what my child care
23 issues were limited to and so it had to do with child
24 care issues, nothing about the deposition. So I
25 apologize for the confusion.

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1 Q. That's okay. And I didn't want to get into
2 the details of your child care issues, I just thought
3 it was my understanding that you actually had talked
4 with Mr. Gerron yesterday?

5 A. Yes. Yes.

6 Q. Okay. So I didn't want you to misrepresent
7 anything on the record here.

8 A. I appreciate that.

9 Q. Did Mr. Gerron, in that conversation, did
10 you and he talk about anything substantive about this
11 case other than just the logistics of whatever child
12 care issues you had to deal with?

13 A. No, sir.

14 Q. I'd like to get a summary from you of your
15 educational background, just from high school forward.

16 A. Okay. I was a graduate of Union High School
17 here in Tulsa, Oklahoma. Graduated in 1990.

18 I briefly attended Tarrant County Junior
19 College and that's in Texas. I transferred to
20 Oklahoma State University and I graduated in 1996.
21 With a bachelor's degree.

22 Q. I'm assuming you eventually went to the
23 police academy?

24 A. Yes, sir. I was hired in January of 1997 by
25 the Tulsa Police Department, attended the police

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1 academy, upon graduating the police academy I was an
2 officer for about three years, promoted to Corporal,
3 and then in 2006 I believe, the beginning of 2007, I
4 was promoted to the rank of Sergeant. And that's the
5 rank I currently hold now.

6 Q. When you were an officer, what kinds of
7 responsibilities did you have?

8 A. I was just a patrol officer, assigned to a
9 subdivision, assigned to a vehicle and patrolled the
10 streets.

11 Q. In the course of your duties as a patrol
12 officer did you have the opportunity to gather
13 evidence of any offenses or crimes?

14 A. I did, sir.

15 Q. Okay. What kinds of activities were you
16 engaged in for that purpose, what kinds of things did
17 you do?

18 A. Pretty much any and all. Go on a domestic
19 violence, anything that would hold any substance in
20 Court, weapons used, we would gather that, go on major
21 crime scenes.

22 The primary responsibility of a patrol
23 officer is to secure the crime scene until detectives
24 arrive, note any possible witnesses, do canvases,
25 things of that nature.

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1 Q. As a patrol officer, would you interview
2 witnesses regarding an investigation of an offense?

3 A. Depending on offense, if it was a serious
4 offense such as homicide, serious felony assault,
5 detectives would usually handle that, but other than
6 that, yes, we would interview any witnesses related to
7 any other minor crimes.

8 Q. Would you, for at least some crimes, gather
9 physical evidence at the scene?

10 A. Yes, sir.

11 Q. What kinds of physical evidence would you
12 gather, just generally?

13 A. Weapons, evidence that may contain bodily
14 fluids, photographs if they were necessary in an
15 investigation, just anything related to the particular
16 investigation if we believed it should hold any kind
17 of evidentiary value, we would gather it.

18 Q. Fair to say that if you happened upon a
19 scene where there was an offense and you saw an
20 opportunity to gather evidence, you in fact, would
21 gather that evidence?

22 A. Correct. Depending if there was no legality
23 issues with gathering said evidence.

24 Q. Well, and that's a good point, if, you can't
25 just go grab evidence wherever you want to; right?

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1 A. Unfortunately not.

2 Q. Okay. You have to, in some cases, get a
3 search warrant to get permission to go gather evidence
4 on private property; correct?

5 A. That's correct.

6 Q. Okay. And if you were aware that there were
7 evidence on private property that you wanted to go
8 gather, you would go get a search warrant; correct?

9 A. Unless there --

10 Q. Or attempt to do so?

11 A. Unless there was an extenuating
12 circumstance, yes, that's correct.

13 Q. Okay. Because your objective would be to
14 go gather the evidence to support the prosecution of
15 the offense; right?

16 A. You're correct, sir.

17 Q. When you were promoted to Corporal, did your
18 responsibilities change?

19 A. I was the, what was considered first line
20 supervisor. It's what we refer to them on the Tulsa
21 Police Department. I was assigned to a different unit
22 within patrol. I held a patrol position as a Corporal
23 for approximately two years before I was moved inside
24 to work major crimes, homicide for the evening shift
25 squad.

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1 Q. And you began working major crimes and
2 homicide before you were promoted to Sergeant?

3 A. That's correct, yes.

4 Q. Okay. About what year did you take on that
5 responsibility?

6 A. I believe it was around 2001, around 2001,
7 2002, and I held that responsibility until I was
8 promoted to the rank of Sergeant. So approximately
9 four-and-a-half years, four-and-a-half, five years.

10 Q. Okay. And in that period of your homicide
11 work did you continue to go, go to crime scenes and
12 gather evidence in the course of your work?

13 A. That was our major responsibility, yes, sir.

14 Q. Okay. So it became, those kinds of
15 activities became more important than they were when
16 you were a patrol officer?

17 A. I would agree with that, yes.

18 Q. And more frequent, I guess I would say?

19 A. Yes.

20 Q. And once you became a Sergeant, you
21 continued to do homicide investigation work?

22 A. No, sir. I was, once I made the rank of
23 Sergeant, you're not allowed to stay within the unit
24 that you were promoted from.

25 I was then transferred to internal affairs

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1 which is under the chief section of the police
2 department, and that's where I am today.

3 Q. I'm a bit of a novice when it comes to
4 police work, can you tell me what kinds of
5 responsibilities are involved in internal affairs?

6 A. Yes, sir. We do investigations on
7 complaints on police officers. Any minor complaint on
8 an officer, such as rudeness or failure to do proper
9 paperwork, would fall to the responsibility of their
10 immediate supervisor. Anything of what would be
11 considered a serious nature, excessive force,
12 profiling, things of that nature would come to my
13 office.

14 Q. And I take it, in the course of that work
15 you probably have to interview a lot of people; is
16 that correct?

17 A. That's correct, yes.

18 Q. And in the course of your homicide detective
19 work, you also had to interview people frequently; is
20 that correct?

21 A. That's correct, sir.

22 Q. In this case, my understanding is the
23 investigators were limited to only making observations
24 from the public roadway; is that correct?

25 A. That's correct.

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1 Q. And that's true in your case; right?

2 A. Yes, sir.

3 Q. In the course of gathering the information
4 that you were gathering, I take it then that you did
5 not go on to any private property to gather evidence?

6 A. None that I was aware of, sir, no.

7 Q. You personally did not do that; right?

8 A. No, I did not.

9 Q. Okay. Did you actually collect any samples
10 at any point in the course of your work?

11 A. No, sir.

12 Q. My understanding is that the investigators
13 were also instructed not to engage, meaning
14 communicate with, any private property owners in the
15 course of your work; is that correct?

16 A. We were told to avoid, if possible, but if
17 it was not possible, to be, to not be confrontational.

18 Q. Okay. If somebody came up to you, you
19 obviously, couldn't?

20 A. Yeah. To be rude to them, so to speak, roll
21 your window up, just drive off would seem offensive,
22 so we weren't to seek them out.

23 Q. If you were making observations of an
24 activity on a particular piece of property, did you
25 ever make any attempt to go interview anybody about

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1 that activity?

2 A. No, sir.

3 Q. And you never attempted to identify and
4 speak with the owner of the property where that
5 activity was occurring; right?

6 A. That's correct.

7 Q. Is it fair to say that the nature and the
8 way that you were conducting your investigative
9 activities in this case is significantly different
10 than the way you conduct investigative activities with
11 the Tulsa police force?

12 A. Yes and no. If I may, we were not allowed
13 to collect anything. We wouldn't know what to collect
14 if we could, but my time with major crimes -- my
15 primary tool was a camera. So taking photographs from
16 an area where I could not reach, is, was common place
17 for me at times.

18 So in that way it was similar, but in other
19 ways it was different, as to I wasn't collecting
20 evidence, things of that nature.

21 Q. You were not collecting evidence other than
22 pictures; right?

23 A. That's correct, yes.

24 Q. You didn't go on the property to gather any
25 kinds of samples; right?

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1 A. That's correct.

2 Q. And you could have been instructed to do so,
3 fair to say?

4 A. Yes, I could have.

5 Q. They could have said, you know, if you see a
6 litter pile please go ask for permission to get on the
7 property and get a sample; right?

8 A. Right.

9 Q. Okay. And?

10 A. Correct.

11 Q. You were specifically told not to do that;
12 correct?

13 A. Yeah, do not go on the property. That's
14 correct.

15 Q. To draw an analogy, if the unfortunate were
16 to occur in your line of work, maybe you've run across
17 this, did you ever in your course of your homicide
18 work run across the a circumstance where there was a
19 body in a field?

20 A. Oh, yes. Yes.

21 Q. Can you -- would it be appropriate or would
22 it have been appropriate in that case, for you to have
23 taken a picture of the body in the field from the
24 public roadway and concluded your investigation with
25 just that evidence?

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1 A. No.

2 Q. You would have had to go into the field;
3 right?

4 A. Correct.

5 Q. You would have gone and gathered evidence at
6 the scene where the body was; right?

7 A. Correct.

8 Q. And I guess that's what I'm getting at in
9 this line of questioning --

10 A. Okay.

11 Q. -- is, you didn't do anything like that in
12 this case; right?

13 A. I did not, sir.

14 Q. You did not go on to the actual scene to go
15 gather the evidence like you would in the course of
16 your police work; right?

17 A. That's correct.

18 Q. And you were specifically told not to do
19 those kinds of activities; right?

20 A. Anything that had to do with getting on the
21 property we were told not to do.

22 Q. What were the tasks that you were assigned
23 to do?

24 A. I believe, if I recall, when this first
25 started we were told to just get what we call

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1 waypoints or GPS coordinates. We were given aerial
2 maps of the area and each day we were given an
3 assignment. And we were basically a two man unit, one
4 person would have the GPS, the other person just the
5 driver. And we would try to locate each what appeared
6 to be a chicken farm or poultry farm from the aerial
7 maps. Drive in front of the property, on the main
8 road or the public road, and then hit the GPS
9 coordinates.

10 There were some that were, I don't know how
11 familiar you are with that area, but some of the
12 terrain is extremely hilly, you can't see from the
13 roadway. So we would just get to where you could pull
14 on to the property, from the public roadway, we would
15 just stop there and take the GPS or waypoint
16 coordinates from there.

17 As it went on and we were given cameras at
18 the time, instructed if you see anything, if you see
19 any poultry trucks or litter trucks leaving, feel free
20 to document it.

21 And then as the time went on and time being
22 weeks, months, the assignments changed from getting
23 waypoints at these locations to see if we can see any
24 litter spreading, things of that nature, document
25 those with photographs and waypoints of where they're

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1 being spread at.

2 If possible, where the trucks were coming
3 from and going to. How many trucks did you see go to
4 those certain points. How many trucks were you able
5 to follow from a certain location on that given day,
6 if possible, and waypoint and document the times with
7 GPS coordinates and photographs.

8 Q. So I can understand, be sure that I
9 understand correctly, there were really what seems to
10 me two phases, one was to inventory these barns to see
11 if they were active or not, and to fill out forms with
12 regard to those; right?

13 A. Correct, sir.

14 Q. And during the course of that you were
15 instructed if you saw a litter trucks rolling to, you
16 know, see what they were up to; right?

17 A. Correct, sir.

18 Q. But that was incidental to the
19 identification of activity of the barns; right?

20 A. That's correct.

21 Q. And then it transitioned to you didn't need
22 to do that activity task anymore, you were strictly
23 looking for litter hauling and land application
24 activities?

25 A. That's correct.

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1 Q. Anything else that you were asked to do
2 that's not subsumed within those two tasks?

3 A. If we were, I can't recall.

4 Q. Did you do any background research into any
5 individuals?

6 A. I did not, no.

7 Q. And I think you said you didn't interview
8 anybody; right?

9 A. I only had one contact with an individual,
10 but it was incidental and it wasn't to interview them.

11 Q. And what -- tell me what that contact was.

12 A. I believe it was me and Darren Froemming
13 were documenting some spreading activity with
14 photographs. And I believe the farm was, I apologize
15 if this isn't a correct name, I believe it was the
16 Schneider farm.

17 Q. Well, I wouldn't want you to guess, but if
18 that's your recollection as best you can.

19 A. I believe it is and I remember the guy's
20 name was Bart and he was operating a spreader truck
21 and he actually chased us down and cut us off and got
22 out of his truck to ask what we were doing.

23 And I have to admit, if you're on property
24 and you see guys pulling up and taking pictures, I
25 don't blame you for chasing us down to see what we

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1 were doing.

2 We told him we were just there to document
3 and he told me, I think he said he was related to
4 someone on the farm, if I recall. And just said he
5 was just doing what he was paid to do. And I think he
6 thought we were of more authority than what we were
7 because I remember the conversation between Darren and
8 I as we drove off, was, you know, who did he think
9 that we were, we were just taking photographs. He got
10 very apologetic. And so I say it was a confrontation
11 but it wasn't a confrontation that was aggressive. It
12 was just.

13 Q. Didn't escalate or anything?

14 A. No, it didn't escalate, it was, you know,
15 what are you doing, we told him what we were doing and
16 then he, well, I'm just spreading and, you know, I
17 apologize for cutting you guys off. And that was
18 about it. That was the only contact we ever had with
19 an individual.

20 Q. And you basically said in your mind, you
21 appreciated that his concern about being watched and
22 photographed was justified?

23 A. Yeah. Actually I appreciated that he got
24 out of the truck and he wasn't, because these are
25 farmers and this is their livelihood and I can

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1 understand how they can take offense to us going and
2 documenting something that could affect their
3 livelihood. So that's one reason we were told, do not
4 make any kind of contact with these individuals. They
5 could be friendly, or they could be very
6 confrontational because you could affect that are
7 livelihood with documentation for the State of
8 Oklahoma.

9 So more than anything I was just happy that
10 it was a nice conversation, so.

11 Q. And I'm getting a sense that, kind of
12 assumed in how you're telling this story is that that
13 this guy might have been uncomfortable because he
14 thought he might have been doing something wrong, is
15 that what you're trying to say?

16 A. That's kind of the conversation that Darren
17 and I had when we pulled away was that he had this
18 look, I'm just getting paid to do what I'm supposed to
19 do. He had one of those kinds of attitudes.

20 Q. But isn't it fair to say that even if he
21 wasn't doing anything wrong, he would have been
22 justifiably concerned about somebody on the roadside
23 taking pictures of whatever he was doing?

24 A. I don't blame him one bit, yes.

25 Q. I mean, you'd feel the same way if you were

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1 at your house mowing your yard and somebody was taking
2 pictures of you; right?

3 A. Absolutely.

4 Q. You don't have to be doing anything wrong to
5 be concerned about somebody taking pictures of you
6 that you don't know who they are and why they're
7 there; right?

8 A. That's correct, yes, sir.

9 Q. And he didn't say he was doing anything
10 wrong, did he?

11 A. No. No. He did not.

12 Q. What training did you receive to perform
13 these activities, and I'm not talking about
14 investigation, but what training did you receive?

15 A. Our documentation in Arkansas.

16 Q. What training did you receive to do the work
17 in this case?

18 A. We had one meeting involving attorneys for
19 the State and the employees and management of
20 Lithochimeia on this is what we're going to do, we're
21 going to go out, take waypoints. We were instructed
22 on how the use the GPS coordinates machine, we were
23 given Fuji cameras, given a quick tutorial on this is
24 how you use the camera.

25 And that was basically it. And we were

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1 given, initially we were given forms -- well, let me
2 back up. I don't know if we were initially given
3 those forms or not, but there was forms that had it
4 printed out that said waypoint listed areas where you
5 could put photograph numbers and stuff, and I don't
6 recall if that came later on or if we were just doing
7 it on a notebook first. But at some point we were
8 doing it both notebook and those preprinted forms.
9 And that's basically it.

10 We weren't given anything on ag law or
11 anything of that nature.

12 Q. I'm kind of curious that you'd volunteer the
13 thing that you weren't given anything about ag law. I
14 didn't ask about ag law.

15 A. Right.

16 Q. I didn't ask what you weren't trained on, I
17 asked what you were trained on.

18 A. Okay.

19 Q. Why did you raise the issue of ag law? Why
20 did you think that mattered to me?

21 A. Because you're wondering what kind of
22 training that we had at all to do what we did.

23 Q. That's right. And I'm not wondering what
24 kind of training you didn't have.

25 A. Okay.

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1 Q. I was asking what kind of training you did
2 have.

3 A. I was just kind of doing the whole
4 circumference of it, I apologize.

5 Q. Okay. Did anybody tell you in the course of
6 either your work or your preparation for your
7 deposition, that you should be mindful of the fact
8 that you don't know anything about ag law?

9 A. Not that I recall.

10 Q. Did Mr. Gerron ever tell you anything about
11 the law or your lack of knowledge of the law?

12 A. No, I don't believe so.

13 Q. If?

14 A. He may have mentioned something during that
15 first meeting, but specifically pointing it out, I
16 don't recall.

17 Q. You said that you did this work in two man
18 units?

19 A. Yes, sir.

20 Q. Were you typically assigned to do your field
21 work with any particular individual?

22 A. No, I did it with several different people.
23 Darren Froemming was someone I did it with the most,
24 him and Tim Bracken, those were two individuals I did
25 it with the most.

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1 I think I did one day with Kirk Gardner,
2 could have been more than that, but I believe it was
3 just one day.

4 Went with Mike Huff and Mike Nance a couple
5 of times, not many. And if there's any others it may
6 just be slipping my mind, but primarily I went with
7 Darren Froemming and Tim Bracken.

8 Q. Your 1099s, as I recall, show roughly the
9 same amount of, well, in 2005 about \$6,900 in
10 compensation and in 2006 about \$5,400 in compensation;
11 correct?

12 A. That's correct, sir.

13 Q. What was your hourly rate?

14 A. It was I believe it was around \$30 an hour,
15 give or take. I can't recall the exact figure but it
16 kind of changed, I believe it was around \$30.

17 Q. Everybody else was getting 90. No, I'm
18 joking.

19 A. 90 an hour? Well, I got ripped off.

20 Q. I was joking.

21 MR. WOMACK: You weren't supposed to tell
22 him that.

23 Q. (BY MR. WALKER) I have heard that others
24 were getting paid about 30.

25 A. Yeah, it was in that ballpark. And I

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1 apologize, I don't remember the exact number. But it
2 did fluctuate because if you happened to drive that
3 day, you got your mileage taken care of, as well, so.

4 Q. Okay. Do you recall about how many days you
5 worked total or by year, or however you can express
6 that in your best estimate?

7 A. There was a time when I was going like two
8 and three times a week and then it would go down to
9 about once a week. And then there was a couple of
10 weeks I just, I didn't go at all.

11 I apologize, I don't recall. It seems like
12 a lot but.

13 Q. How long?

14 A. I don't recall, I'm sorry.

15 Q. How many hours a day did you typically work
16 when you were in the field?

17 A. There were some days that we went and it was
18 about eight hours. We would leave Tulsa about 6:00 in
19 the morning and once we got in Arkansas we would start
20 doing all the documentation.

21 Q. And you'd be back by 2:00 in the afternoon?

22 A. Sometimes we'd be back by 2:00 and then
23 there were some days that we did ten, 12 hour days and
24 we didn't get back till close to 5:00 or 6:00 in the
25 evening.

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1 Those were few and far between, but usually
2 we'd get back close to somewhere around 3:00, 3:00
3 p.m.

4 Q. Who was supervising your work?

5 A. Steve Steele.

6 Q. Other than your initial training meeting --
7 let me go back to that actually for a moment.

8 Mr. Gerron was running that meeting, do you
9 recall?

10 A. I don't recall who was running the meeting.
11 Several people spoke as to what our role was, how we
12 were just there for documentation. And why we were
13 doing it, that the State of Oklahoma was filing suit
14 against several different poultry farms as it related
15 to the watershed.

16 And so different, several different people
17 spoke, so I don't know if there was one person running
18 the meeting or not.

19 Q. Do you recall the name of any of the
20 individuals who spoke at that meeting?

21 A. I remember Rick Gerron speaking, one of the
22 directors of Lithochimeia.

23 Q. Burt Fisher?

24 A. Burt, I was going to say Bart again, but,
25 yes, Burt spoke. Steve Steele spoke. He had been in

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1 more constant contact with Burt and with Mr. Gerron,
2 so he had his fill in to reiterate what we were to do
3 and what we were not to do.

4 And we were given necessary equipment such
5 as GPS coordinates and cameras. And that was
6 basically it.

7 Q. Did you have occasion to talk with
8 Mr. Fisher at any time after this initial meeting?

9 A. Yes. Throughout my duration of doing this,
10 there was times that he met with us, he was either
11 going along with Steve, possibly, or he was going out
12 into Arkansas to go with someone, if I recall.

13 There was another time that we took, me and
14 another individual, I can't recall who it was that
15 went with me, went around with some individuals that
16 were taking samples. We took two large white vans and
17 Burt was one of the individuals. The others were
18 scientists, lab techs. I would not know their names
19 if they were said to me.

20 And our basic responsibility was just to
21 get, take them around to water sources that they
22 wanted to take samples of.

23 Q. Sergeant Tuell, I asked you earlier in your
24 deposition to tell me all the tasks that you were
25 engaged in.

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1 A. Uh-huh.

2 Q. And you told me that you did this house
3 inventory activity?

4 A. That's correct.

5 Q. And that you looked for litter spreading.

6 A. That's correct.

7 Q. And litter trucks, you didn't tell me about
8 following sampling teams around. Any reason you
9 didn't tell me that?

10 A. Because it did not occur to me as we're just
11 speaking, it was just.

12 Q. Okay.

13 A. As to who I'd been with, the nature of your
14 question kind of just jogged my memory that that was
15 one of the things that we did.

16 Q. Does that also jog your memory of other
17 types of work that you were doing?

18 A. No, it does not, not at this time.

19 Q. Okay. If something else comes up?

20 A. I will mention it.

21 Q. That you think of, please let me know.

22 A. I will.

23 Q. How many days were you out with Mr. Fisher
24 and this sampling team?

25 A. I can only recall one time.

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1 Q. One day?

2 A. Yes, it was one day.

3 Q. How long was that day or how long was your
4 work that day?

5 A. Maybe it was about an eight hour day, if I
6 recall right.

7 Q. You should have told me 24 hours. So you
8 had about an eight hour work day with the sampling
9 team?

10 A. Yeah, if I remember correctly it was just
11 one day and it was about eight hours.

12 Q. And how many people were with Mr. Fisher on
13 this sampling team?

14 A. Around the ballpark of maybe ten
15 individuals.

16 Q. And you had one vehicle for all of you?

17 A. No, there was two, two vans.

18 Q. Okay. Two vans, about ten workers with
19 Fisher?

20 A. I think ten total, yes. In that ballpark of
21 individuals, yes.

22 Q. Okay. When did this activity occur?

23 A. That was one of the last things I think I
24 did for them, not the last, but kind of as it was
25 winding down for my involvement.

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1 And so it was towards the end of my duties
2 with Lithochimeia and the State of Oklahoma.

3 Q. Would that then have been in 2006 sometime?

4 A. Probably so, yes, sir.

5 Q. Do you remember the time of year that you
6 were out there in 2006?

7 A. It was warm, it was probably sometime in the
8 summertime. I don't recall the exact date or month.

9 Q. About how many locations did you all go to
10 that day?

11 A. I don't recall. It was more than five. If
12 I remember correctly, they had a few areas they wanted
13 to go to and -- so I can't -- it was roughly around
14 five spots, maybe.

15 Q. Did the vans stay together and go to the
16 same places at the same time?

17 A. Yes. Yes. We all, we followed one another.

18 Q. Were those locations in Oklahoma or
19 Arkansas, or both?

20 A. Predominantly Arkansas but it may have been
21 both. There may have been a trail back off into the,
22 across the Oklahoma border but I cannot recall, but I
23 know we initially went to the state of Arkansas.

24 Q. That's where you started your work and if
25 you crossed the border west into Oklahoma, you

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1 wouldn't have known it based on where your familiarity
2 with the area?

3 A. Yeah. Unfortunately a lot of the rural
4 roads aren't marked if, you know, made it back to
5 Oklahoma.

6 Q. Welcome to Oklahoma signs, they're not all
7 over the place.

8 A. Yeah. You're safe, so.

9 Q. Speaking of safe, did you work -- did you
10 carry a side arm with you during this sampling
11 activity?

12 A. There was occasions that I did, not all the
13 time, no.

14 Q. I'm asking about this sampling activity, if
15 you had a side arm with you that day, if you know?

16 A. I don't recall. But that wouldn't -- if I
17 did, that's not that unusual. I tend to carry one
18 with me anyway.

19 Q. And I guess, really what I'm wondering is,
20 why did they need you to drive around with them to go
21 take their samples?

22 A. Like I said before, we were basically
23 infringing, if that's the right word on these
24 individuals livelihoods, a lot of the individuals
25 running the spreader trucks.

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1 A lot of the farmers, from what we
2 understood, were not happy about the documentation we
3 were doing and I know Burt and those individuals
4 didn't feel safe just going out and getting samples
5 from the public roadway. And so they wanted someone
6 there with law enforcement, something with law
7 enforcement with them. Which is why we were hired to
8 do this because we had the expertise to deflect any
9 confrontations, hopefully.

10 Q. So you were basically hired as a security
11 force for them, for that sampling activity?

12 A. That would probably be a correct way to say
13 it. I think security force is kind of a harsh way to
14 say it, sounds like we went in there in force or
15 something, but it was basically, they just didn't want
16 to be caught off guard with -- because they're going
17 to have their backs turned and messing with water
18 samples.

19 And heck, I believe -- I believe Burt said
20 at one time, what made him feel real uncomfortable is,
21 they had actually placed some water testing containers
22 in some of the water sources and they would come back
23 and check them from time to time, and some of them
24 would be riddled with bullet holes. And so that
25 concerned him.

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1 So he said, you know, I don't want to be
2 doing samples with my back turned. So basically we
3 were there, since we had no job knowledge on what they
4 were doing, to basically keep an eye on them while
5 they were doing what they were doing.

6 Q. Did you ever personally see a vandalized
7 piece of sampling equipment?

8 A. No, sir, I didn't. I didn't see any.

9 Q. That's just what Mr. Fisher told you?

10 A. That's correct.

11 Q. So if your job was to go out there and
12 protect these samplers from any possible threat, I
13 guess, of the landowner, would you, do you think you
14 would have brought your weapon with you?

15 A. I probably would, but like I said, that's
16 not that unusual for me to travel with it. I tend to
17 travel with it quite often, so.

18 Q. Did you in fact, encounter anybody that you
19 had to protect these people from?

20 A. No.

21 Q. So, the sampling went off without event;
22 right?

23 A. Without event, that's correct.

24 Q. Fair to say in the course of all of your
25 work making these observations, nobody ever threatened

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1 you; right?

2 A. No. Like I said the closest we came was to
3 Bart, and that was actually not a bad discussion that
4 we had.

5 Q. Okay. Did you ask Bart who he worked for?

6 A. Like I said, I think I recall it being the
7 Snyder farm.

8 Q. Well I'm not asking where he was. I'm
9 asking you, did you ask him or did he tell you who he
10 actually worked for?

11 A. I know we didn't ask him who he worked for,
12 it was none of our business. But whether he offered
13 it up or not I don't recall.

14 Q. When you saw -- well, I take it you saw
15 litter spreading activities other than that particular
16 occasion; right?

17 A. That's correct.

18 Q. At any time when you saw litter spreading
19 activities, did you attempt to find out the identity
20 of the person who was driving the truck?

21 A. Of the individual, no. Of the truck, there
22 were times that we tried to document the markings on
23 the truck, but always were not successful, either the
24 truck was too far from us, or the filth upon the truck
25 obscured the markings on the truck.

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1 Q. So I take it, you didn't find out in any
2 situation who the driver of any of these litter
3 spreading trucks that you saw worked for?

4 A. No.

5 Q. And for any location where you saw litter
6 spreading occur, you didn't do anything to determine
7 who owned the property other than perhaps looking at
8 what sign might be at the property; is that correct?

9 A. If I'm understanding correctly, are you
10 saying that when we go upon the public road where the
11 entrance to the farm was, it would say Tyson farm,
12 owned by Farmer Smith, or something of that nature?

13 Q. Yeah. Let me back up and maybe just walk
14 into this without making such a long question.

15 You came upon empty fields in the course of
16 your work; correct?

17 A. That is correct.

18 Q. Sometimes you came upon locations where
19 there were signs that were posted by the entrance to a
20 particular property; right?

21 A. That's correct.

22 Q. And it might have a farmer's name on that
23 sign; right?

24 A. That's correct.

25 Q. Might have one of the Defendants or an

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1 integrators name on that sign; right?

2 A. That is correct.

3 Q. Do you know what a integrator is?

4 A. Yeah, I believe so. They're the companies
5 that the Defendants in this lawsuit, like Tyson,
6 Peterson, those individuals?

7 Q. Those kinds of companies.

8 A. Then yes, sir.

9 Q. Okay. But there weren't signs out front of
10 all the fields you went and looked at, were there?

11 A. No, there was not.

12 Q. In fact, there probably weren't signs out
13 front of most the fields you looked at; right?

14 A. The fields, you're correct, no.

15 Q. And my question is, other than the places
16 that you went where there was a sign in front of the
17 property, did you do anything to identify who owned
18 the fields you were looking at?

19 A. No. No. If we saw a spreader truck go into
20 a field, any field, whether it be marked by an
21 individual's name or not, and you're right, most of
22 them were not marked, we would take a GPS point of
23 where that vehicle went.

24 Q. And that's all you did; right?

25 A. That's all we did.

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1 Q. And even in instances where there was a sign
2 posted, you didn't do anything further to verify who
3 actually owned that property and who was working on
4 that property; right?

5 A. That is correct.

6 Q. In the course of the work, the day that you
7 were with this sampling team, did you personally take
8 any samples?

9 A. No.

10 Q. I think you said that these people that were
11 with Dr. Fisher, were wearing lab coats or something
12 like that, or what were they wearing?

13 A. Oh, I don't recall what they were wearing.

14 Q. Were they wearing like white Tyvek jumpsuit
15 things or?

16 A. Not that I recall.

17 Q. I'm just trying to jog your memory here.

18 A. Yeah.

19 Q. Were they wearing special gloves or booties
20 or anything like that?

21 A. They had equipment with them and I wasn't
22 privileged to the equipment.

23 Q. Were you watching them?

24 A. Not really.

25 Q. What were you doing?

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1 A. Just stayed up on the roadway. Just me and
2 whoever else it was that went out with me that day.
3 Our job was just to stay by the vehicles, watch the
4 vehicles, make sure that no one came up and tried to
5 mess with the team as they were doing whatever it was
6 they were doing.

7 Q. You don't recall who was with you that day?

8 A. As far as the other individual like myself?

9 Q. Right.

10 A. No, I don't, I'm sorry.

11 Q. Did Dr. Fisher contact you directly to give
12 you this assignment or did you get it through Steve
13 Steele?

14 A. Through Steve.

15 Q. So Steve was aware of this activity?

16 A. Yes.

17 Q. He was aware that he sent you and one other
18 investigator out to observe Dr. Fisher's sampling
19 team?

20 A. Yes.

21 Q. I think you said that the samplers were out
22 there to collect water samples; is that?

23 A. That was my understanding, yes.

24 Q. That's what you were told by Dr. Fisher?

25 A. They were just going out to get samples, and

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1 I know we stopped at some water sources, so if they
2 were getting soil samples or anything of that nature,
3 I'm not aware. I just recall water being mentioned.

4 Q. Okay. You didn't see them coming back up,
5 you know, up to the vehicles with their samples,
6 weren't able to see what they had?

7 A. No, I didn't.

8 Q. Were you around the samplers at any time
9 during your work that day where you could hear them
10 talking about their work?

11 A. Oh, yes, but as far as specifics and details
12 of what they were saying, no.

13 Q. You can't recall any particular
14 conversation?

15 A. No. I have to admit they were, they make
16 you feel stupid. They were using jargon that was
17 conducive of what they do for a living and it meant
18 nothing to me.

19 Q. Technical stuff?

20 A. Yeah, very technical stuff.

21 Q. You mentioned earlier that you were doing
22 work in the watershed. What watershed were you
23 working in?

24 A. We always referred to it as the watershed,
25 that we understood was the watershed that fed into

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1 Oklahoma.

2 Q. Have you ever heard of the Illinois River
3 watershed?

4 A. Yes. Yes.

5 Q. Would that be the watershed?

6 A. Yes. If we spoke of the watershed, that's
7 the watershed we were speaking of.

8 Q. And just because I can get tongue-tied, is
9 it okay if I just call that the IRW?

10 A. Sure.

11 Q. Or I might just say the watershed; all
12 right?

13 A. That's fine.

14 Q. That's what we're talking about; okay?

15 A. Okay. That's correct.

16 Q. How did you -- well, do you know where the
17 watershed is, where the boundaries are?

18 A. I don't know the boundaries.

19 Q. When you were conducting your work, did you
20 have the means of determining whether you were inside
21 or outside the watershed?

22 A. We knew if we went to too far, if we hit
23 somewhere outside of Fayetteville, or something, we
24 knew we were outside the watershed, but as far as the
25 actual line drawn, no, I don't know the exact line of

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1 the watershed.

2 I know predominantly a lot of the farms that
3 we were given for assignment getting GPS points and
4 documenting spreading, I know that those were within,
5 we were told were within with watershed. There was a
6 couple times we would see spreader trucks load up.

7 I mean, there were some spreader trucks that
8 were actually semi size, and they would get on the
9 highway I don't recall the highway name, and they
10 would head out of Arkansas and we would just stop
11 trying to pursue them to see where they were going
12 because they were outside the watershed.

13 We didn't know where that line was, but we
14 knew if we went too far we were definitely outside the
15 watershed.

16 Q. When you saw trucks, these semis with litter
17 leaving Arkansas, what state were they going into?

18 A. To be honest, I don't know.

19 Q. What direction were they going? Were they
20 going north?

21 A. They were actually going kind of like in a
22 southeast direction.

23 Q. Southeast?

24 A. Yes.

25 Q. Okay. So these are trucks that you, I

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1 guess -- how do you know they left the State? Did you
2 follow them for a couple 100 miles?

3 A. No. We didn't know if they were definitely
4 leaving the state. We had no idea. We just knew that
5 they were leaving the watershed.

6 Q. Okay.

7 A. As soon as they got to a certain point in
8 the state, within the state, we knew they're
9 definitely out of the watershed.

10 Q. Okay. I just misunderstood your testimony.

11 A. Yeah. So where they ended up, I have no
12 idea.

13 Q. But what's the furthest that you remember
14 tailing one of these litter trucks?

15 A. Probably about ten miles outside of
16 Fayetteville, roughly. And once we got to a certain
17 point on the highway, we're, and whoever it was I was
18 with that day, we had discussion that this, this is
19 pointless, we're definitely way outside the watershed.
20 So we just turned around and came back.

21 Q. How many times do you recall that you
22 followed a truck that you definitely knew was outside
23 the watershed?

24 A. I can only recall doing that once. And no
25 more than that.

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1 Q. When -- did you have occasion to see those
2 big semitrucks with litter in them at other times?

3 A. I can't recall if we did or not.

4 Q. I've pulled out an exhibit that is by now
5 familiar to the lawyers in the room, but I'll put it
6 in front of you. The court reporter has marked
7 Exhibit 2, which I'll represent to you is a collection
8 of three different kinds of forms that I assembled.

9 And I want to ask you some questions about
10 them; okay.

11 A. Okay.

12 Q. Do you recognize the first page of Exhibit
13 2?

14 A. Yes, this is one of the forms that we were
15 provided at one point on documentation of our
16 activities.

17 Q. As between the two primary tasks that you
18 talked about, the inventory task of determining
19 whether houses were active or not versus the litter
20 spreading activity and hauling task, was this form a
21 form that you used for one versus the other of those,
22 the first page of Exhibit 2?

23 A. I don't think I follow your question
24 exactly.

25 Q. Well you said that you did this inventory

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1 work; right, of whether the houses were active or not?

2 A. That is correct.

3 Q. And then you made observations of litter
4 spreading activity as another distinct task; right?

5 A. That is correct.

6 Q. And I'm just wondering was this form used
7 for one or the other of those tasks, or both, or do
8 you remember?

9 A. It was used at some point. I don't recall
10 at what point we began using this form, if it was
11 in -- this is one of the earlier forms, if I recall.

12 Q. How about the second page of Exhibit 2, same
13 question, do you know what task this was intended for?

14 A. Basically the same task. Like I said, the
15 forms kind of changed as we either simplified or
16 needed more information to provide on them.

17 So like I said, at one point we had forms we
18 were given to document what you saw and didn't see,
19 things of that nature. And there was other times we
20 just used spiral notebook or notebook form of
21 documentation. So both these basically served the
22 same function, if I recall.

23 Q. And what function was that?

24 A. Documenting any activity we saw, the
25 specific integrator's farm, any activities as far as

1 spreading, if they were related, just that basic type
2 information.

3 Q. Okay. How about the third page of Exhibit
4 2, can you tell me what the purpose of that form was,
5 if you recognize it?

6 A. Yes. For the same purposes, like I said,
7 some of the forms were a little bit more detailed than
8 others, but they were all basically used for the same
9 purpose.

10 Q. Were you given any instructions in how to
11 use the forms?

12 A. Just basic, limited instruction as to make
13 sure you, if you see anything mark it down, if you see
14 feed silos, propane tanks, things of that nature, mark
15 it down.

16 I think as it went on some of these things
17 were asked of us, as far as the documentation purposes
18 of an integrator's farm. I can't think of anything
19 else.

20 Q. Okay. Is it correct for me to assume that
21 if you were out in the field and observed any of the
22 activities that you were told to observe, that you
23 would document those activities?

24 A. Yes, we would have.

25 Q. And you understand the importance of

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1 documenting activities in an investigation from your
2 police work; right?

3 A. That's correct.

4 Q. I want to ask you some questions about the
5 first page and go through these in a little bit more
6 detail. When you were making your observations, you
7 would document the date of the observation and the
8 time; correct?

9 A. That's correct.

10 Q. And on this form it has an entry for poultry
11 type, broiler, layer, pullet, turkey, do you see
12 that?

13 A. Yes.

14 Q. Can you tell me the difference between a
15 broiler, a layer and a pullet?

16 A. I cannot.

17 Q. Okay. Did you ever endeavor to try and make
18 that choice on this form?

19 A. I don't -- to be honest, I don't recall
20 seeing that. So I don't know if I made a -- I just
21 knew the poultry types, chicken, turkey, you know,
22 things of that nature; whether it was broiler, layer,
23 pullet, no clue.

24 Q. You can tell the difference between a
25 chicken and a turkey; right?

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1 A. That's safe to say, yes.

2 Q. Okay. But as the difference between a
3 broiler, layer and pullet, you don't know what that
4 would be?

5 A. No, sir.

6 Q. Did anybody tell you why they wanted to know
7 those distinctions?

8 A. If they did, I'm not sure. I know why they
9 wanted to see other things on this page but whether it
10 being broiler, layer, pullet, turkey.

11 Now I know at some point when we came across
12 the integrator, they did want to know whether it
13 appeared to be a chicken farm or a turkey farm and
14 most integrators put that on their sign.

15 But distinction between broiler, layer, and
16 pullet, no, I'm not sure.

17 Q. And you just said something that I think you
18 were assuming something that I want to ask you about?

19 A. Sure.

20 Q. If you saw an integrator's name on a sign,
21 did you assume that the integrator owned the property?

22 A. That Tyson owned the property?

23 Q. Say you saw Tyson on a sign outside of a
24 property, was it your assumption that they owned the
25 property?

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1 A. No. The way I took it was is if it said
2 George's, or Peterson, or Tyson, that that particular
3 farmer provided his poultry to that farm, so he
4 didn't -- everything he raised went to either Tyson,
5 or everything this integrator raised, or this farmer
6 raised went to Peterson.

7 That's the way I understood it. I don't
8 think Tyson owns all these individual, or Peterson
9 owns all the individuals.

10 Q. These are independent farmers who are
11 raising livestock and providing that livestock through
12 whatever business arrangement they have to one of the
13 integrated companies?

14 A. That's the way I understood it, yes.

15 Q. So in the part of this form which is the
16 first page of Exhibit 2, just below where we were
17 talking about the bird types, there's a spot for
18 individual name. What were you supposed to put in
19 there?

20 A. If it had like the Johnson farm.

21 Q. Okay.

22 A. And the integrator being, you know, Tyson,
23 or -- and I apologize, whoever is with Tyson, I don't
24 mean to keep pointing fingers. But, yeah, we would
25 just -- and then we'd put whoever the integrator was

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1 after that.

2 Q. And that was for the -- in the integrator
3 name spot on this form; right?

4 A. That's correct.

5 Q. Okay. And then there's just below that set
6 of boxes in bold it says, could be observed from
7 public access, do you see that?

8 A. Yes.

9 Q. Okay. And what was the point of that
10 question?

11 A. Like I said earlier, a lot of times we would
12 go to a farm and you'd see the integrator and the
13 farmer's sign at the threshold of the public roadway,
14 but the farm itself was, you couldn't view it.

15 Q. Okay. And so in that case you'd circle no,
16 you couldn't see it?

17 A. That's correct.

18 Q. And that was pretty much the end of filling
19 the form out; right?

20 A. That's correct.

21 Q. If you could see the farm, then I take it
22 that you would go ahead and fill out what you could
23 below there about the physical condition of
24 structures, and the physical plant components and
25 those things?

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1 A. Yeah. And there were some that and I don't
2 recall the farmer or the location, but I recall that
3 some of them you couldn't see from the roadway, but if
4 you'd go to a different area, a different rural area,
5 you could look back and kind of make out the farm, and
6 you could kind of see some of the things.

7 So could it be observed from public access
8 yes, but from, but from the standpoint of seeing it
9 from the actual roadway where you enter the farm, no,
10 you couldn't see some of them.

11 Q. So you might be able to drive a, you know,
12 half mile away and look back and see a little bit of
13 it; right?

14 A. Right. Right.

15 Q. So you'd make the best observation you could
16 from there?

17 A. That's right.

18 Q. Were you given any criteria to use in
19 assessing whether the physical condition of the
20 structures were good, fair or poor?

21 A. No, we just -- I believe as individuals, we
22 just took on what we believed to be in good condition,
23 or fair condition, or poor.

24 What I would consider poor is if it just
25 looked dilapidated to the point to where I'm surprised

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1 they just didn't raise the whole thing. And then fair
2 looks like it could have been operable, maybe torn
3 curtains or whatever, and maybe it could or could not
4 sustain livestock.

5 And then good actually is very good
6 condition.

7 Q. Good's very good?

8 A. Good is good. How is that for clear?

9 Q. Fair to say that it's just whatever your
10 impression was?

11 A. Yes.

12 Q. Nobody told you here's a list of what good
13 means, and here's what fair means, and here's what
14 poor means?

15 A. That's correct.

16 Q. Okay. And so you'd make your judgment and
17 any other investigator was free to make whatever their
18 judgment was; right?

19 A. Right.

20 Q. And the same thing about the physical plant
21 components, good, fair poor, same subjective
22 determination?

23 A. Yes.

24 Q. The next box below has a number of requested
25 observations for observed activities, do you see that?

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1 A. Uh-huh. Yes.

2 Q. And then to the right of that, there's
3 another list of observations under the other category;
4 right?

5 A. That's correct.

6 Q. Taken together, you know, this set of
7 observations that they were asking you to make, what
8 was your understanding of the purpose of making all
9 those observations?

10 A. I don't know if we were told what our
11 purpose was for making those observations, other than
12 just to make those observations.

13 Q. In the overall box here it has active,
14 inactive, abandoned and unknown, you see that?

15 A. Yes. Yes.

16 Q. Were you instructed to assess and make a
17 choice of those four choices?

18 A. Yes, if we can make a determination, yes.

19 Q. And if you couldn't, then you'd circle
20 unknown?

21 A. Right. Correct.

22 Q. Is it your understanding that that was the
23 purpose of looking to see what the condition of the
24 structure was, whether there were tanks, propane
25 tanks, feed silos, ventilation fans that were running

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1 or not, all those kinds of things so you could assess
2 whether that particular barn that you were looking at
3 was active, or inactive, or otherwise that you
4 couldn't tell at all; right?

5 A. Correct.

6 Q. Okay. And that really, was the purpose of
7 my earlier question.

8 A. Okay.

9 Q. Is what were you trying to do here?

10 A. Okay.

11 Q. And you were trying to determine was this an
12 active barn; right?

13 A. That would probably be fair to say, yes.

14 Q. Okay. Can you tell me what under the other
15 category, stacked, used litter/cake means to you?

16 A. The way I took it, is a lot of times we
17 would pass some of the farms and you could -- and a
18 lot of the farms were right up against the roadway,
19 and they had separate facilities that they would store
20 all their litter in.

21 And it was, a lot of it was accessible on
22 all four sides, they just probably had a cover over
23 the top of it, but you could see all of the litter
24 being shoved into that area.

25 And, you know, at times we'd go by those

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1 farms just as a regular drive and it would be full and
2 other times we'd go and it would be empty.

3 But that's basically what we were looking
4 for, to see if that litter was present on the farm.

5 Q. Okay. You're looking to see if there were
6 litter in the barns as an indication that there was
7 activity or not?

8 A. Correct. Correct.

9 Q. And can you tell me the next thing below
10 says stacked new litter, can you tell me what that
11 meant to you?

12 A. Like I said sometimes we would go by and
13 these areas where it was obvious that they were
14 storing litter away from the livestock, it would
15 fluctuate as far as the height and the dimensions of
16 the stack itself, which would lead us to believe that
17 if there's more the next day or the next few days,
18 it's new litter. And if it's getting lower, it's
19 probably going to be refilled at some point again.
20 Now the turnaround from egg to cell, I don't know what
21 that is. But we would at least see a fluctuation of
22 some of the litter stacks.

23 Q. Are you aware from your experience driving
24 around the watershed looking at these farms, that the
25 farmers bring in new pine shavings or bedding material

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1 on some occasions?

2 A. Uh-huh.

3 Q. To put that material into their barns?

4 A. Yes.

5 Q. If you saw a stack of that bedding material
6 would you indicate on this form that that was stacked
7 new litter?

8 A. No.

9 Q. As well?

10 A. No. I wouldn't.

11 Q. You wouldn't?

12 A. No. That, to me that's not litter, that's
13 bedding for a whole new round of livestock coming into
14 the barn.

15 Q. Would it surprise you if other investigators
16 used that stack new litter entry to designate the
17 bedding material?

18 MR. WOMACK: Object to the form. Go ahead
19 and answer.

20 THE WITNESS: It would surprise me, I just
21 don't take that as litter. Litter to me is the
22 byproduct of what comes out of the poultry.

23 Q. (BY MR. WALKER) Did you receive specific
24 instruction in your training about what each one of
25 these entries means and how you were to interpret

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1 them?

2 A. Not that I recall. I think it was like you
3 said, it was more of a use your common sense, or, you
4 know, I guess in some instances, subjective to each
5 individual investigator.

6 Q. Okay. So you used this form in whatever way
7 made sense to you and everybody else kind of used it
8 in whatever way made sense to them; right?

9 A. That would probably be safe to say, yes.

10 Q. You did not get, I guess, a thorough line by
11 line explanation of what you were supposed to do with
12 this form, did you?

13 A. It was run down, but I don't think anyone
14 asked for specifics, that I recall. There may have
15 been some individuals that wanted more, you know, at a
16 later time from Steve on what he wanted, but I don't
17 recall ever feeling that I needed more detailed
18 information as to what litter was, so.

19 Q. Okay. Do you have an agricultural
20 background?

21 A. I do not.

22 Q. Okay. Have you ever been on a poultry farm?

23 A. No.

24 Q. Were you ever raised in a, you know, or live
25 in a rural area?

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1 A. No.

2 Q. Always been in the city?

3 A. Yes. I did go to an A&M school, but.

4 MR. CHADICK: Nothing wrong with that.

5 THE WITNESS: There's nothing wrong with
6 that.

7 MR. WOMACK: I object to that.

8 THE WITNESS: But, no, other, no, I've never
9 been around farms.

10 Q. (BY MR. WALKER) Okay. In your
11 undergraduate studies did you ever take any
12 agricultural courses?

13 A. No.

14 Q. Did you take any courses regarding the
15 environment?

16 A. No.

17 Q. Take any courses in geology?

18 A. I believe I did take one.

19 Q. Yeah.

20 A. But I don't recall the specifics of it. It
21 was more of a.

22 Q. Good field trips?

23 A. No. And if we were supposed to get some,
24 I'm a little irritated. But, no, I remember the class
25 being in the Noble Research Center at Oklahoma State,

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1 but I don't recall the details of that class.

2 Q. Did you apply whatever you might have
3 learned in your geology class to the work you did in
4 this case?

5 A. No. That would be a big disservice to
6 whoever the instructor was.

7 Q. Okay.

8 MR. WALKER: We're about out of tape. Time
9 to take a break; okay?

10 THE WITNESS: Okay. 09:51 AM.

11 VIDEOGRAPHER: We're now off the videotape
12 record. The time is 9:53 a.m.

13 VIDEOGRAPHER: We're now back on the
14 videotaped record, the time is 10:03 a.m.

15 Q. (BY MR. WALKER) I'll remind you that you
16 remain under oath; okay?

17 A. Yes, sir.

18 Q. I want to go back to this form, but I
19 thought of something about the sampling team work, did
20 you take any pictures of the activities of those
21 samplers?

22 A. If we did, I don't recall that. I don't
23 believe we did, though. But I honestly don't recall.

24 Q. Do you remember if you had a camera with you
25 that day when you were driving the van?

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1 A. I don't. I really don't.

2 Q. Were you actually driving the van?

3 A. Yes.

4 Q. And the other?

5 A. And the other individual with us, I believe,
6 drove the other van.

7 Q. The other inspector?

8 A. Yes.

9 Q. I just want to confirm that the process for
10 you was the same as for everybody else, so I'll try
11 and make this short, but when you were conducting your
12 work on any given day, is it correct that you would
13 meet with Mr. Steele and the other investigators
14 working that day and get your assignment and the maps
15 and the forms that you needed to complete for that
16 day's work?

17 A. Yes.

18 Q. And then you would go out in the field and
19 make your observations and then at the end of the day
20 you would reunite with Mr. Steele and the other
21 investigators and deliver the information to Mr.
22 Steele?

23 A. Not necessarily with the other
24 investigators, but eventually by the end of that work
25 day Steve Steele would have all the documentation from

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1 that day.

2 Q. You'd go find Mr. Steele and give him your
3 information; right?

4 A. Yes.

5 Q. And the information you'd give him would be
6 the forms; right?

7 A. That's correct.

8 Q. And you'd give him the camera that you used;
9 right?

10 A. That's correct.

11 Q. Give him the GPS unit that you used?

12 A. Yes.

13 Q. Were you issued any other equipment for your
14 work, other than the, the form book, camera -- oh, GPS
15 and did you have a video camera ever?

16 A. We may have had a video camera at one point.

17 Q. Do you recall taking any videos yourself?

18 A. Not that I recall. I really don't. But I
19 think predominantly what we did was still photo.

20 Q. Do you recall any of the people that you
21 road with taking videos?

22 A. Gee, I'm sorry, I really don't recall if we
23 did. I'm wanting to say there was a video camera,
24 towards the latter part of what we did. I don't
25 recall a video camera at all, but I'm wanting to say

1 there was a video camera involved at some point, but I
2 don't recall.

3 Q. When you got to the phase of the project
4 where you were going out to look for litter hauling
5 and spreading activities, how did you get your
6 assignment of where you were going to go that day?

7 A. From Steve, he would -- there's times that
8 he would have maps, aerial maps, rolled up and he
9 would have them marked for who he was going to give
10 them out to.

11 And at some point each farm was marked or
12 there would be a red dot, some distinguishing mark
13 upon the map, aerial map, and we were directed to go
14 to each one of these places, either to get a GPS point
15 or to document any activity at each place.

16 Q. Do you recall there being any aerial
17 surveillance as a part of the activities of your
18 investigation?

19 A. Nothing that I was involved in, but I know
20 that there was some aerial surveillance done.

21 Q. Was there any day that you were making
22 observations that you were directed to a particular
23 location by somebody up in an airplane?

24 A. There was one day that, I believe the pilot
25 is a chaplain on our police department, Danny

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1 Linchard, I remember working one day when he was also
2 working, but I can't recall specifically if we were
3 directed to any certain location from him or if we
4 referred him to any locations.

5 Q. And when he was working that day, do you
6 know if he was working as a pilot or do you know what
7 he was doing that day?

8 A. He would have been a pilot. I know he's an
9 amateur pilot, but so he would have had an observer,
10 I'm sure and I don't know who that would have been.

11 I just remember one specific day that Danny
12 was going to be there while I was there.

13 Q. Okay. And I guess I understand that he's a
14 pilot. How is it that you know that he was actually
15 going to fly that day?

16 A. Just from conversations that we had when we
17 met that morning. We'd always meet at the Uniform
18 Division East Police Department, which, excuse me,
19 it's actually called Mingo Valley Division now, which
20 is at 11th and 169, here in Tulsa, and we would meet
21 usually around 6:00 a.m. and then head towards
22 Arkansas, and that morning we were told, I recall,
23 that at some point during the day, Danny Linchard's
24 going to end up flying his plane and I forget that
25 small airport just inside Arkansas, it's around

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1 Bentonville, I believe.

2 Q. Siloam Springs?

3 A. Yes, around that area, and that he would be
4 showing up there to fuel and he would be in the air
5 that day. And I can't recall what his specific job
6 was for that day, though.

7 Q. Did you see him flying around that day?

8 A. I didn't see him.

9 Q. Another question comes to mind about the
10 sampling activities task. When you were driving the
11 vans with the samplers, were there any lawyers riding
12 around with you that day, too?

13 A. There could have been. I don't know.

14 Q. I'm sure there could have been, I'm just
15 wondering if you remember.

16 A. No, I don't remember if there was or not.

17 Q. You don't remember if Mr. Gerron was there?

18 A. I don't believe he was. He could have been,
19 but it doesn't strike in mind that he was.

20 Q. Do you know who Louis Bullock is?

21 A. Yes.

22 Q. Do you know if Louis Bullock was there that
23 day?

24 A. No, I remember seeing him on a couple of
25 occasions throughout this, but I can't recall if it

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1 was one of the sampling days or not.

2 Q. When you saw Mr. Bullock, did you talk with
3 him, interact with him in any way?

4 A. No, I don't talk to Mr. Bullock.

5 Q. What was your understanding of, or
6 observation of, what he was doing when you did see him
7 in the course of your work?

8 A. I just knew that he was one of the attorneys
9 involved, but as far as any specific conversations, I
10 never had a specific conversation with him, or -- and
11 I don't recall him being around to be privileged to
12 any conversation he was having with anyone, but I do
13 remember seeing him.

14 Q. Did you see who he was talking to or working
15 with?

16 A. No, I really don't.

17 Q. How many times did you see him, do you
18 think?

19 A. It's kind of blurring together because he's
20 been involved in some of the stuff with the police
21 department, as well, so I really can't recall.

22 His activities, as it involves with the
23 police department, and his activities, as it involves
24 with the poultry investigation, are kind of blurred
25 together, so I apologize, I don't recall.

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1 Q. And I don't want to get too far off topic
2 here, but can you tell me generally what kind of
3 activities he's involved with the police department?

4 A. He was the principal attorney for suing the
5 police department on the black officer's coalition and
6 got a decree put against the police department. So
7 his face and his person was around the department for
8 quite some time.

9 Q. Did you see Mr. Gerron at any time out in
10 the field?

11 A. Yes, but I don't recall how many times and I
12 don't recall a specific date. But I believe he was
13 out there at least one time. But I don't -- I'm
14 sorry.

15 Q. Do you have any understanding why he was out
16 there? What he was up to?

17 A. No.

18 Q. In the course of gathering information, did
19 you ever destroy any documentation or information that
20 you had created?

21 A. No.

22 Q. Were you ever asked to destroy any
23 information?

24 A. No.

25 Q. Are you aware that Burt Fisher issued a

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1 report in this case?

2 A. I'm sure he did. I don't know what kind of
3 report he would have. I'm not privileged to anything
4 he provided.

5 Q. Okay. And you said you're sure he did. Why
6 is it you're sure he issued a report?

7 A. Because he's the head of Lithochimeia, so
8 I'm sure he's done some kind of documentation or
9 reporting, but I was not privileged to anything.

10 Q. Was it your understanding that you were out
11 there with the other investigators to gather
12 information to support his work?

13 A. Yeah, I would assume so, because his company
14 was the principal company employing Steve Steele and
15 us.

16 Q. That's who was paying you; right?

17 A. Right. That's correct.

18 Q. So I take it then, that Mr. Fisher never
19 gave you an opportunity to review his report, in this
20 case to verify that, however he characterized your
21 work?

22 A. No, I never reviewed that. I didn't even
23 know there was such documentation. I know he's
24 probably documented stuff, but what he's documented, I
25 have no idea.

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1 Q. Okay. And to the extent that he made
2 statements in reliance upon yours and the other
3 investigators' work, you were not given an opportunity
4 to verify whether those statements were correct or
5 not?

6 A. That's correct.

7 Q. In the course of preparing your
8 documentation, did you have any process with your
9 teammate to review the forms and check for mistakes,
10 be sure everything was accurate?

11 A. Yes, there was times when we would try and
12 get as much as we could. It seems that it would be
13 fairly simple to sit in a car and document stuff, but
14 there's a lot of times that things are happening so
15 quickly, you're following one spreader truck and then
16 another one pulls out that looks like you might want
17 to follow it, so you turn.

18 And so, at some times it became cumbersome.
19 So, yes, at the end of the, what we, shift so to
20 speak, we would try to see if, okay, when we put this
21 down, is this accurately what we saw.

22 Okay, did you recall what direction this
23 spreader truck turned, did it turn left or did it turn
24 right, do we have that right. And so just to make
25 sure that we both were recalling the exact same

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1 information.

2 But what we tried to do is as we saw it, we
3 documented as we saw it so that it would be accurate.

4 Q. And did you -- were you ever told by Steve
5 Steele that there was any deficiency in one of the
6 forms that you'd filled out and requested to correct a
7 form or make any changes to a form?

8 A. Not that I recall, no.

9 Q. Was it your understanding or did you have
10 any understanding of whether Steve Steele was
11 reviewing this documentation?

12 A. I thought he was. I mean, I don't know if
13 he was or not. I don't know if he collected it and
14 just handed it right over, or if he went through all
15 of it himself. I'm not sure.

16 Q. And he testified that he was reviewing it --

17 A. Okay.

18 Q. -- I just was trying to find out if you ever
19 got any feedback from him in the course of his review
20 of your work?

21 A. No.

22 Q. I just want to ask you some questions that
23 are probably a matter of formality. I think I know
24 the answers, but I need to ask them. Do you have any
25 personal knowledge of the business relationship

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1 between poultry growers and integrators?

2 A. I don't know any of that.

3 Q. Do you have any personal knowledge of
4 poultry care and husbandry practices?

5 A. No.

6 Q. Do you have any personal knowledge of what
7 an animal waste management plan is?

8 A. No.

9 Q. Ever heard of one?

10 A. No.

11 Q. Do have you any personal knowledge of what
12 poultry litter best management practices are?

13 A. Never even heard of that.

14 Q. Do you have any personal knowledge of bird
15 mortality management practices?

16 A. Never heard of that either.

17 Q. Do you have any personal knowledge about the
18 differences in which chickens and turkeys are raised?

19 A. No.

20 Q. Do you know what a brood house is?

21 A. I do not.

22 Q. Do you know what a grow-out house is?

23 A. No, I do not.

24 Q. Do you know what brood litter is?

25 A. I do not.

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1 Q. Do you know what grow-out litter is?

2 A. I do not.

3 Q. Do you anything about the chemical
4 composition of poultry litter?

5 A. No, I've heard them use terms like
6 phosphorus, phosphorus levels, other than that, no, I
7 don't know what that refers to or what that means, but
8 that's the only thing I've heard of, so.

9 Q. Okay. Who told you about phosphorus levels?

10 A. That's just what I've heard being brought up
11 from time to time, the specific individual that may
12 have said it, I mean, it could have been Steve because
13 he's had more intimate conversations with Burt.

14 Q. Steve Steele?

15 A. Yes. But I've heard phosphorous thrown
16 around. And what it means or what context, I don't,
17 but.

18 Q. That's about all you know about litter?

19 A. Yeah. That's all I've heard about litter,
20 is phosphorous.

21 Q. Do you know the difference between
22 phosphorous and phosphate?

23 A. Well, that could have been the word. Okay.
24 I don't know. I remember it was something like that,
25 phosphate or phosphorous, or something. Could be

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1 phosphate.

2 Just showed my limited knowledge right
3 there.

4 Q. I'm just asking, you know.

5 A. I don't know.

6 Q. And I'm not trying to make you feel ignorant
7 or anything.

8 A. No, hey, this subject, I'm comfortable in
9 criminal law, so this subject does make me feel a
10 little bit -- I'm out of my element as far as this
11 goes, but that's okay.

12 Q. Speaking of being out of your element, also
13 fair to say that you've never done an agricultural
14 investigation in the course of your police work?

15 A. That is correct.

16 Q. You've never done an investigation of an
17 environmental issue in the course of your police work?

18 A. That is correct.

19 Q. Did you report any of the observations that
20 you made in the course of your work in this case to
21 any state governmental agency?

22 A. No.

23 Q. No environmental agency or anything like
24 that?

25 A. I wouldn't know what to report.

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1 Q. The only thing you?

2 A. Yeah.

3 Q. Is it fair to say the only person you
4 reported to was Steve Steele?

5 A. That's correct. I reported directly to
6 Steve Steele.

7 Q. You didn't do any direct reporting to Burt
8 Fisher?

9 A. That's correct.

10 Q. In the course of your training and in your
11 work on this case, did anybody ever tell you that
12 poultry litter was a hazardous waste?

13 A. I don't know if it was ever specifically
14 said, but you'd have to be an idiot, and I don't mean
15 that to be rude, not to know that we were out there to
16 document poultry litter.

17 Q. I understand that. My question is very
18 specific, did anybody with the State of Oklahoma or
19 Burt Fisher or the lawyers representing the State of
20 Oklahoma tell you that poultry litter is a hazardous
21 waste?

22 A. Specifically, no, I don't think so, but I
23 knew that's what we were out there to document, was
24 just the nature of what we were doing.

25 I just don't want to misrepresent my

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1 statement. But I don't recall anyone specifically
2 coming to me and saying, Shane Tuell, we need to do
3 this because poultry litter is a hazard, I don't
4 recall that, no.

5 Q. Let's me ask you something a little bit
6 different.

7 A. Okay.

8 Q. Did anybody ever tell you that your health
9 could be in danger in the course of conducting your
10 work in this case?

11 A. No.

12 Q. Did anybody ever tell you that you could be
13 exposed to harmful bacteria in the course of doing
14 your work in this case?

15 A. Not that I recall, no.

16 Q. Did the State of Oklahoma or anybody working
17 with them ever issue any protective equipment to you
18 for your use in your work in this case?

19 A. No.

20 Q. Didn't give you any dust masks or anything
21 like that; right?

22 A. No.

23 Q. No coveralls or booties or gloves; right?

24 A. That's correct.

25 Q. Did you ever get sick as a result of the

1 course of your work in this case?

2 A. Not that I know of.

3 Q. Do you have experience in knowing what
4 different kinds of grasses are, the colors of
5 different kinds of grasses, those kinds of things?

6 A. No.

7 Q. Do you have knowledge about warm seasonal
8 grass varieties and cool season grass varieties?

9 A. No.

10 Q. Do you know what the term agronomic rate
11 means?

12 A. No.

13 Q. Do you understand in the course of your work
14 that the litter spreading was the purpose of
15 fertilizing fields?

16 A. Did I understand that that's what it was
17 for?

18 Q. Yes.

19 A. It appeared that's what it was for, for
20 fertilizing.

21 Q. Do you know that litter is used as a
22 fertilizer?

23 A. Yes, yes, I do.

24 Q. Have you ever used litter as a fertilizer at
25 your home for your garden, anything you might have?

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1 A. Not knowingly, not unless whatever bag I
2 purchased had some in it, I don't know.

3 Q. You've used commercial fertilizer?

4 A. Yes. Actually, I use True Green.

5 Q. True Green?

6 A. Yeah. True Green. That's not a promo. I'm
7 not getting paid to say that, by the way.

8 Q. I have used them, too, so.

9 Did you ever do anything to estimate or
10 determine the rate of application when you saw any
11 litter application activity?

12 A. No. No. Go back for half a second. When
13 you say the rate at what it was applicated, does that
14 mean how many trucks we saw to go in a specific field
15 during an observation time, or amount per square foot,
16 or, that I don't know. But I know that there were
17 some occasions that we said we saw in this, within
18 this hour period, we saw three spreader trucks go into
19 this field. There were times that we did that.

20 Q. Okay.

21 A. But as far as what the size of the field
22 was, whether they were going over the same exact
23 application time after time, or if they were just
24 methodically going from point A. to point B. in the
25 field, that, I don't know.

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1 But I know there were times where we
2 documented how many trucks we saw go in a specific
3 field.

4 Q. Just how many trucks?

5 A. Right.

6 Q. Not the rate at which the litter was coming
7 out of the back end of the truck --

8 A. Exactly. No clue.

9 Q. Not how much litter was being put down per,
10 you know, square foot or anything like that; right?

11 A. Right. Right.

12 Q. Did you ever take any measurements of any
13 fields?

14 A. No.

15 Q. So I take it, you never took any
16 measurements to determine the distance from where any
17 land application of litter was occurring to any water
18 body?

19 A. That's correct.

20 Q. And I think you said you never personally
21 took any samples of anything; right?

22 A. To go on the property and take samplings of
23 what was happening, yeah, I never did that, never.

24 Q. Or even in the public right-of-way, did you
25 ever take samples of anything?

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1 A. I know samples were, like if guys came upon
2 litter cakes, they may have picked them up.

3 Q. I'm asking about you.

4 A. I know. It's going to sound strange because
5 picking up a litter cake or a dead chicken would seem
6 to shock someone's memory, but I don't recall. I know
7 we were told if you see anything like that, like a
8 dead chicken in the road, or some litter that's in the
9 roadway, public roadway, if you see it fall off the
10 truck, whatever, grab it.

11 Q. You don't remember ever having done that?

12 A. If I did, it wouldn't surprise me, but I
13 don't recall specifically doing it know.

14 Q. You don't remember picking up dead chickens?

15 A. Again, that sounds like I should remember
16 picking up a dead chicken, but.

17 Q. A cute little toe tag and a bag.

18 A. In my work in the homicide we saw so much, I
19 mean, you would think that things would stick out,
20 but.

21 Q. That's okay.

22 A. And it would not surprise me if I did pick
23 up, anything I would have picked up though would have
24 been on a public roadway, but I haven't had the
25 benefit of reviewing documents since the time that

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1 we've done this. But it wouldn't surprise me if I
2 did, but I don't know specifically if I did.

3 Q. And I'm not trying to trick you here.

4 A. Oh, I know you're not, I just don't want to
5 misrepresent myself. I just don't recall if I did or
6 not.

7 Q. Okay. And I've got some documents that
8 we're going to go through and some of the other
9 lawyers at the table may do the same thing.

10 A. Okay.

11 Q. I'm just trying to get what you remember;
12 okay?

13 A. Okay. Sure.

14 Q. You can appreciate in the course of your --

15 A. Oh, yeah.

16 Q. Hang on a second. Let's talk one at time.
17 You can appreciate in the course of -- well, that's
18 all right.

19 In the course of your work, did you do
20 anything to determine how any of the properties that
21 you observed had been used historically?

22 A. No.

23 Q. You testified earlier, other than noting
24 what sign might be posted if there was one, you didn't
25 do anything to determine who owned any property?

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1 A. That's correct.

2 Q. Did you do anything to determine the history
3 of commercial fertilizer use for any property in the
4 IRW?

5 A. No.

6 Q. State didn't ask you to do that?

7 A. No.

8 Q. State didn't ask you to look into historic
9 land use issues?

10 A. No. If they asked someone on the team, like
11 Steve, or one of those individuals to, I don't know,
12 but me, specifically, I did not, no.

13 Q. Yeah. And I really am trying to get in this
14 deposition what it is that you know.

15 A. Okay.

16 Q. Because we're deposing everybody else; okay?

17 A. Okay. Okay.

18 Q. Did the State ask you to investigate in any
19 way the history of the land application of poultry
20 litter in the IRW?

21 A. No.

22 Q. Did the State ask you to investigate the
23 history of cattle use in the IRW?

24 A. No.

25 Q. Did the State ask you to document as part of

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1 your investigation the present cattle uses and the
2 land uses in the IRW?

3 A. No.

4 Q. Did they ask you to document any other kind
5 of livestock in the IRW, other than poultry?

6 A. No.

7 Q. Do you know what BMPs, Inc. is?

8 A. I do not.

9 Q. Did you do anything in the course of your
10 work to determine the type of litter that was being
11 applied?

12 A. No.

13 Q. Mr. Steele testified that the investigative
14 work was done in good weather, not done in the rain;
15 is that your recollection?

16 A. Yes, that's my recollection.

17 Q. So I take it that you didn't go to any
18 fields to observe whether there was any water running
19 off of any fields?

20 A. That's correct.

21 Q. That you did not see any runoff occurring
22 during the course of your work?

23 A. That's correct.

24 Q. Did the State ask you to go and document any
25 occurrences that you could see of stream bank erosion?

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1 A. Not that I recall.

2 Q. Did you see a lot of cattle when you were
3 out there doing your work?

4 A. Not a lot, no.

5 Q. No. Did you see any cattle, cows, walking
6 through any streams or ravines?

7 A. I recall seeing cattle from time to time,
8 whether they were walking through a water source or
9 not, I don't recall.

10 Q. State didn't ask you to pay attention to
11 what the cattle were doing, did they?

12 A. No.

13 Q. Did you document any recreational uses of
14 any rivers or water bodies when you were in the IRW?

15 A. I did not.

16 Q. State didn't ask you to do that?

17 A. No.

18 Q. Did you document the presence and activity
19 of any septic systems in the IRW?

20 A. I don't recall. I wouldn't even know what a
21 septic system looks like as far as, I don't think we
22 were specifically asked to.

23 Q. State didn't ask you to go and try and
24 inventory where there were septic systems in the IRW?

25 A. No.

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1 Q. Did you serve any Subpoenas in this case?

2 A. I did not.

3 Q. Did you ever go to any person's property to
4 try and get permission to collect well samples?

5 A. No, I did not.

6 Q. Did you ever go to any person's property to
7 get permission from them to access their property for
8 any purpose?

9 A. Not that I recall, no.

10 Q. Based on your knowledge of the laws of
11 Oklahoma, did you perceive any activity that you
12 observed in the course of this investigation as being
13 illegal or unlawful?

14 MR. WOMACK: I'll object to the form. Go
15 ahead.

16 THE WITNESS: No, I did not.

17 Q. (BY MR. WALKER) And did you report any
18 activities that you saw to any law enforcement agency?

19 A. I did not.

20 Q. Do you ever go tubing or fishing in the IRW?

21 A. Fishing, no. It's been quite some time
22 since I've gone down the Arkansas River.

23 Q. Have you ever gone to the Illinois River?

24 A. I said Arkansas, I meant Illinois River, I'm
25 sorry. Yes, I have gone down there but it's been a

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1 long time, pre-investigation.

2 Q. How long ago, if you can recall?

3 A. It's been since I've been on the police
4 department. Probably the last time was, if I'm
5 remembering correctly, around 2000, 2001, maybe.

6 Q. In the course of the detective work you've
7 done for the Tulsa Police Department when you've gone
8 to gather evidence for offenses, possible crimes,
9 things like that, has it been important for you to
10 know what the crime is?

11 A. Yes.

12 Q. That you're investigating?

13 A. Yes.

14 Q. So for example, the crime of murder because
15 you know you're looking at a murder scene, that tells
16 you what kinds of evidence you need to be looking for
17 and gathering; right?

18 A. Yes.

19 Q. And different, you know, other crimes would
20 cause you to consider different types of evidence
21 depending on the crime; right?

22 A. That's correct.

23 Q. You volunteered earlier in your deposition
24 that you don't have any knowledge of agricultural law;
25 right?

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1 A. That's correct.

2 Q. So in the course of your investigation in
3 this case, you were gathering only photographic
4 evidence and you were not privy to whatever violations
5 or offenses to which the evidence you were gathering
6 might pertain; right?

7 A. That's correct.

8 Q. So you didn't have an opportunity to use
9 your own judgment about what kinds of evidence you
10 should get to support any particular offense that you
11 may be looking at; right?

12 A. That's correct.

13 Q. If any were occurring?

14 A. Right.

15 Q. I'm not meaning to say that there were.

16 A. Yeah. Right.

17 Q. So it's very different from the kinds of
18 investigative work that you do; right?

19 A. That's correct.

20 Q. The court reporter has marked and put in
21 front of you, I put it in front of you, Exhibit 3.

22 A. Yes.

23 Q. I will represent to you that this is a
24 collection of inspection sheets that to me, anyway,
25 appeared to have your name on them?

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1 A. Yes.

2 Q. And they're a collection that I selected
3 because they indicated that you visited a facility
4 affiliated with my client, Cargill, whether it be one
5 of their own facilities or a contract grower's
6 facility or whatever in that regard; okay?

7 A. Okay.

8 Q. Do you recognize the first page of Exhibit
9 3?

10 A. It's a photo or a copy of a writing by Tim
11 Bracken where Sergeant Bracken and I took my vehicle
12 to document some activity on April 21st of 2005.

13 Q. So you were driving that day and Mr. Bracken
14 was doing the writing; correct?

15 A. That's correct.

16 Q. When you were driving, were you also
17 responsible for making observations or were you only
18 staring at the road?

19 A. No, we were both making observations, he was
20 the documenter of any observations, but we were both
21 making the same observations.

22 Q. Okay. You were working collectively to make
23 the observations, but he would write them down?

24 A. That's correct.

25 Q. So if there was something that you saw he

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1 would write that down for you?

2 A. That's correct.

3 Q. If you can turn to the second page, it has
4 some tiny little post it or something, do you have any
5 idea what that is?

6 A. I have no clue, sir.

7 Q. Okay. And it just happened to be in
8 sequence of these pages.

9 A. Okay.

10 Q. The third page of Exhibit 3 has an entry for
11 waypoint seven part way down the page, do you see
12 that?

13 A. Yes, sir.

14 Q. And it says the D. E. Rucker Farm, you see
15 that?

16 A. I do.

17 Q. Okay. I'll represent to you that Rucker is
18 a contract grower for Cargill and there's a comment
19 that says the spreader returned to this farm after
20 dumping in the field. Do you see that?

21 A. I do.

22 Q. Do you have any specific recollection as you
23 sit here today of what was going on at the Rucker
24 property on April 21st, 2005?

25 A. Specifically what was going on at that

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1 property?

2 Q. Right. Other than what's on this form?

3 A. No. I don't know what was going on on that
4 property.

5 Q. Okay. Whatever recollection, or whatever
6 knowledge you have of the events at the Rucker farm
7 that day is limited to what's written on this page;
8 right?

9 A. Yes. Apparently a spreader truck was in a
10 field, which is waypoint six. We followed that empty
11 spreader back to waypoint seven.

12 Q. Okay.

13 A. And we were able to observe the tag number
14 of that spreader vehicle as it returned to waypoint 7.
15 So that's what we got on that day.

16 Q. Okay. So you saw a spreader spreading in a
17 field at some other location and then that spreader
18 went to the Rucker farm?

19 A. Returned back there, yes.

20 Q. Okay. And you indicate that it was dumping
21 in the field. You mean the field that you were
22 observing at waypoint six?

23 A. Yes. Waypoint six, the spreader truck that
24 eventually returned to waypoint seven, which is the D.
25 E. Rucker farm, that spreader truck was spreading in

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1 the field and returned back to the Rucker farm.

2 Q. Spreading in the field at waypoint six, and
3 then it went to the Rucker farm which was at waypoint
4 seven?

5 A. That is correct, sir.

6 Q. Okay. And you used the word dumping, and it
7 says observed spreader in the field. When you use the
8 word dumping here, were you referring to land applying
9 litter?

10 A. Yes, I'm sorry, that's just a loose term I
11 use. But I shouldn't use it in this but.

12 Q. You understand that people might be a little
13 bit offended of the lose use of the word dumping?

14 MR. WOMACK: Objection, form.

15 THE WITNESS: I find no offense to that
16 word, but if there are individuals that it offends, I
17 apologize, but.

18 Q. (BY MR. WALKER) By dumping did you mean
19 land application?

20 A. Yes.

21 Q. Spreading?

22 A. Yes.

23 Q. Off the back of a spreader truck?

24 A. That's correct.

25 Q. You didn't document that any litter was

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1 being loaded at the Rucker farm, did you?

2 A. According to the page I'm looking at, no.

3 The page --

4 Q. On this page?

5 A. Yeah, just on this page, no, there's no
6 indication of that.

7 Q. And I'll tell you I didn't try and exclude
8 all the other pages and hide information from you, I
9 tried to provide you with the pages --

10 A. Sure. Sure.

11 Q. -- that had the observations; okay?

12 A. Sure.

13 Q. But on this page at least, which is what
14 I've given you, you didn't document that any litter
15 was being loaded at the Rucker Farm; right?

16 A. That is correct.

17 Q. Okay. And You didn't document that there
18 were any litter piles at the Rucker farm; right?

19 A. That is correct.

20 Q. And you don't have any independent
21 recollection of what was going on at the farm that
22 day; right?

23 A. That's correct.

24 Q. And I guess, based on the information that
25 you and your colleague recorded that day, for all you

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1 know, Rucker's neighbor was using the spreader and
2 returned it to Rucker that day?

3 A. Yeah, there's a lot of information like I'd
4 said earlier that we're not, we just are not
5 privileged to. I don't know if the spreader trucks
6 have a manifest that show exactly what they do or who
7 they're hired by that day or how many applications to
8 and from a certain location.

9 But like I said, there's a lot of times that
10 we would go by, for example the Rucker farm, any
11 litter piles or whatever, very well may not be
12 viewable from the public roadway. So if there was
13 nothing -- so I guess to get to your point, there was
14 nothing observed as far as we could tell other than
15 that truck returning back to that farm.

16 Q. Okay. You just saw the spreader truck go
17 back?

18 A. That is correct.

19 Q. Go back to that farm. You just saw the
20 truck go to that farm?

21 A. Going back would assume that I saw it leave
22 from there, you're right. But yes, we did see it go
23 to that farm after spreading into waypoint six field.

24 Q. So based on whatever recollection you have
25 or the information on this form, there's no way you

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1 can confirm that there was any, that the litter that
2 you saw being land applied was, actually came from the
3 Rucker farm; right?

4 A. From the work that we did that day from the
5 documentation here, you are correct.

6 Q. The next page of Exhibit 3, which has what
7 we call a Bates number, all these do, I hope in the
8 lower right-hand corner it says 1210, do you see that?

9 A. I do, sir.

10 Q. Okay. And for the benefit of the record,
11 the full number is OK-PL-0001210; okay?

12 Looking at that form is this a form that you
13 filled out or your partner filled out?

14 A. This is Tim Bracken's writing.

15 Q. Okay. But you were with him that day?

16 A. I was.

17 Q. And what date was that?

18 A. This was 7-7-05.

19 Q. And you were observing property adjacent to
20 Cargill turkey production Edwards farms?

21 A. That's correct.

22 Q. And you did not observe in the course of
23 that investigative work any new or used litter on the
24 ground, did you?

25 A. No, it is not check marked.

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1 Q. If you would have seen new or used litter on
2 the ground you would have checked it; right?

3 A. That's correct.

4 Q. Or you would have had your partner check it;
5 right?

6 A. That is correct.

7 Q. Next page numbered 1506, is that
8 Mr. Bracken's writing?

9 A. It is.

10 Q. And that day which was also July 7th of
11 2005, you went to the Joua Farm; right?

12 A. That is correct.

13 Q. And in the section on this form under other,
14 you noted that stack used litter slash cake was
15 absent; correct?

16 A. That's correct.

17 Q. And that there was no stacked new litter
18 either; right?

19 A. That is correct.

20 Q. Next page, numbered 1738, whose writing is
21 this?

22 A. This is my writing.

23 Q. Who were you with that day?

24 A. Darren Froemming.

25 Q. And what was the date?

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1 A. July 14th of '05.

2 Q. And what farm is this an observation of?

3 A. It looks like the Brigance, B-R-I-G-A-N-C-E.

4 Q. Brigance?

5 A. Oh, is it Brigance? Okay.

6 Q. Honeysuckle white?

7 A. Yes.

8 Q. You indicated that there was no stacked used
9 litter or cake and there was no stacked new litter at
10 that farm; correct?

11 A. Yeah. It wasn't observed.

12 Q. It says that you -- did you mark absent?

13 A. Well, yeah, that's the only thing, it's
14 present or absent.

15 Q. And you marked absent?

16 A. Right.

17 Q. So you didn't see any litter out at that
18 farm that day; right?

19 A. We did not see it, no.

20 Q. Okay. And you didn't -- well, I mean, you
21 kind of seem to think that it might have been hidden
22 somewhere, did you take -- hang, on I've got a
23 question about that.

24 A. Sure, sure, sure.

25 Q. Did you take an opportunity to go ask

1 Mr. Brigance to look at his property to see what was
2 there that day?

3 A. Oh, no.

4 Q. No. You were limited to looking and seeing
5 what you could see from the road; right?

6 A. That's absolutely correct.

7 Q. And the State imposed that restriction on
8 you, not Mr. Brigance; right?

9 A. That's correct.

10 Q. Okay. And so when you went out there, you
11 did not see any litter from the limited vantage point
12 that the State allowed you to go look from; right?

13 A. You are correct, sir.

14 Q. In fact, you indicated that Mr. Brigance's
15 farm was abandoned, didn't you?

16 A. It appeared to be.

17 Q. I think Mr. Brigance might be surprised. If
18 you go to page 3059, which is the next page.

19 A. Yes, sir.

20 Q. Who were you with that day?

21 A. Darren Froemming.

22 Q. Is this your writing?

23 A. It is, sir.

24 Q. And what farm were you looking at that day?

25 A. Fong, F-O-N-G.

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1 Q. Honeysuckle turkeys?

2 A. That's correct.

3 Q. And what was the date?

4 A. 8-17 of '05.

5 Q. And did you observe any litter at the farm
6 that day?

7 A. I did not observe it. There was the odor
8 but we did not observe it.

9 Q. You actually checked the box as absent;
10 correct?

11 A. Correct.

12 Q. Next page of Exhibit 3 is page 5570, you see
13 that?

14 A. Yes.

15 Q. Okay. Whose handwriting is on this page?

16 A. This is mine.

17 Q. And who were you with that day?

18 A. Darren Froemming.

19 Q. What was the date?

20 A. 6-29 of '06.

21 Q. And was this the form that you used when you
22 were attempting to document land application of
23 litter, hauling of litter, that kind of stuff?

24 A. This was just one of the forms that was
25 given us. Whether it was specifically to use for

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1 observing applications or whether we were just out
2 there just to observe that day, this was the form
3 provided.

4 Q. So you would have used this form to document
5 whatever you observed that day; right?

6 A. Yes, sir.

7 Q. Okay. Did you document that there was any
8 land application of litter going on that day here?

9 A. No, all we got as far as litter is what's
10 listed as number 35, which would be the photograph
11 number, view of a suspected pile.

12 Q. Suspected pile? Suspected pile of what?

13 A. Litter.

14 Q. Okay. Do you have any specific recollection
15 of seeing that pile that day?

16 A. It would be documented on a photograph.

17 Q. Okay. Guess what, I've got it.

18 A. Okay.

19 Q. Court reporter has marked as Exhibit 4 that
20 same form as the first page that we were just talking
21 about; right?

22 A. Yes. Yes.

23 Q. Okay. We're going to go through this a page
24 at a time here.

25 A. Okay.

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1 Q. And then following that are a series of
2 pictures that I will represent to you, the first one,
3 two, three of those pictures are pictures that were
4 taken by the investigative team that day. And the
5 last two, my office created by zooming in a little bit
6 on the digital image that the State provided to us;
7 okay?

8 A. Okay.

9 Q. Now let's go back to the first page. And
10 just kind of walk through this event. On June 29th of
11 2006, you and Mr., or Detective Froemming were out in
12 the field together; right?

13 A. That is correct, sir.

14 Q. And you went to the Honeysuckle breeder farm
15 number 6; right?

16 A. That's correct.

17 Q. And you stated that you viewed a suspected
18 pile?

19 A. That's correct.

20 Q. And you just testified that that would have
21 been a suspected pile of litter; right?

22 A. Correct.

23 Q. Okay. And the next page is a picture of the
24 sign at breeder farm 6. Does that look familiar?

25 A. Yes, sir.

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1 Q. Okay. Can you see left of that sign in the
2 background is some kind of trailer with a rigging on
3 the back end and what may be a pile of something
4 there?

5 A. That is correct.

6 Q. Okay. And is that what you were making the
7 observation of?

8 A. It was.

9 Q. And were you making that observation from
10 the position in which this picture was taken?

11 A. Yes.

12 Q. Okay. From that distance away; correct?

13 A. That is correct.

14 Q. You couldn't get any closer right?

15 A. Could not.

16 Q. Okay. And so then you made your notation of
17 a suspected pile based on that view; right?

18 A. Correct.

19 Q. The next page number 8093. Would you agree
20 that's a slightly different angle of the same scene?

21 A. Yes, that's as we traveled up the public
22 road just a little bit further.

23 Q. Okay. And that, what's in the foreground
24 there is the entrance road to the farm?

25 A. That's correct.

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1 Q. Okay. And then the third picture is a
2 picture that you also took; right?

3 A. That's correct.

4 Q. And you were taking the pictures because you
5 were the one writing on the forms; right?

6 A. That's correct.

7 Q. So you took this picture that is on page
8 8094?

9 A. Yes, sir.

10 Q. Okay. And can you tell me by looking at the
11 picture you took now, what that is a pile of?

12 A. I don't know. That's why I just put it's a
13 suspected pile.

14 Q. Let's look at the next picture. Well, you
15 put it as a suspected pile, but you just testified
16 that it was a suspected pile of litter?

17 A. That is what we would suspect it of.

18 Q. Any pile?

19 A. Do what?

20 Q. Any pile you would suspect was litter given
21 what the scope of your assignment was; right?

22 A. Right.

23 MR. WOMACK: Objection, form. Go ahead.

24 THE WITNESS: Any pile, especially at a
25 distance, if we can't tell what it is, but it's a

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1 pile, through our course of investigation and/or
2 limited investigation that we could do, most farms
3 from a distance, if we see a pile, we just say it's a
4 suspected pile. We don't know what that pile is.

5 There's been other farms that were close up
6 to the road, closer than this, where you could
7 actually see exactly that it was a pile of litter,
8 there would be feathers present, stuff like that.

9 But from this distance we don't, we can only
10 suspect that it is a pile.

11 Q. You couldn't tell?

12 A. We could not tell, sir.

13 Q. You saw there was a pile?

14 A. Yes.

15 Q. Right? You saw that there was a sign
16 indicating that it was a poultry operation?

17 A. That is correct.

18 Q. And you noted that it was a suspected pile?

19 A. Yes, that's all we could do.

20 Q. But in this case you couldn't get close
21 enough to truly observe the pile to see what it was a
22 pile of?

23 A. You're correct, yes.

24 Q. So you don't know if it was a pile of litter
25 or dirt or whatever?

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1 A. Do not know.

2 Q. Okay. And I'll direct you to the blow up
3 picture, a blow up of the picture in 8094, which is,
4 now I'm directing you to look at the picture that
5 appears on the page of Exhibit 4 immediately after
6 page 8094, which is this one.

7 A. Okay.

8 Q. And I'll ask you given your experience and
9 history of observations, do you think that that's a
10 litter pile?

11 A. To be honest I don't know.

12 Q. Do you see any chickens in it?

13 A. No, but there's chickens absent in a lot of
14 the litter piles that we see.

15 Q. Do those look like shavings or anything like
16 that to you?

17 A. To be honest I can't tell.

18 Q. Do you see any feathers in that picture, in
19 that pile?

20 A. I don't specifically see any feathers.

21 Q. Same question, the next picture, can you
22 tell me what that is a pile of?

23 A. No.

24 Q. Okay. Let me just ask you this way, if the
25 operator of that farm testified that what's in these

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1 pictures and what you observed that day is a dirt
2 pile, do have you any reason to contradict that
3 testimony or disagree with him?

4 A. I could offer no evidence to say that he's
5 telling an untruth.

6 Q. You couldn't contradict that testimony;
7 right?

8 A. I couldn't, no.

9 Q. I think we're done with that for now.
10 Sergeant Tuell, the court reporter has marked Exhibit
11 5; correct?

12 A. Yes, sir.

13 Q. And you have that in front of you now?

14 A. I do.

15 Q. Can you identify what that document, set of
16 pages is?

17 A. The top page I've never seen it before. I
18 always wondered what those little markings were,
19 though.

20 Q. I'm sorry.

21 A. No. All of our equipment is marked with the
22 upside down Y and X and I never knew exactly what it
23 was until looking at that page.

24 Q. Okay.

25 A. Like our cameras and stuff, they wrote on

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1 the side of them so it would be marked for
2 Lithochimeia property and stuff and.

3 Q. Okay. It seems to be what they use.

4 A. Yeah. I thought it was a, yeah, it was a
5 doodle. I didn't know what it was until today.

6 Q. Okay. I've never doodled that myself.

7 A. No, I've never seen this top page before.

8 Q. Okay. What about the next page?

9 A. The second page is a representation of a
10 larger, or this is a smaller form, of the aerial
11 photos we'd receive on random days with markings
12 saying go to this location see if that's there.

13 If you notice, I'm looking with the
14 OK-PL-0005546 and to my left bottom corner.

15 Q. Okay.

16 A. The X. would be along a public roadway and
17 it would be directing us to that farm that's in the,
18 to the upper right of that red X.

19 Q. Okay.

20 A. For us to go by and document what that is,
21 if it's an active farm, if it is an active farm,
22 document.

23 Q. Okay.

24 A. Any activity.

25 Q. Did you get a map like this for every one of

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1 the farms that you were supposed to go to?

2 A. Originally, when we first started this is
3 all we worked off of. We would receive large aerial
4 maps such as this and we were told just to go around
5 and get GPS coordinates of them and I can't remember,
6 if in the first couple of days of this, if we were
7 requested to get photographs of them yet or if we were
8 given a camera and said go ahead and photograph them
9 as you document them.

10 But our initial assignment was get a GPS
11 coordinates of them and document them.

12 Q. And so they didn't give you the GPS
13 coordinates to direct you to the location? Actually,
14 your job was to go obtain a GPS coordinate for the
15 location; is that correct?

16 A. Yes. Now there was times when we did
17 receive sheets of GPS coordinates that we were to go
18 to those GPS coordinates.

19 Q. Right. And I'm just trying to get a clear
20 understanding of the other way that this was done, and
21 early on is that they didn't have GPS coordinates for
22 you; right?

23 A. Not on all of them. The ones we received,
24 they needed GPS coordinates of.

25 Q. Okay. And so you'd get an aerial photo like

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1 this with an X on it and you would drive to that
2 location with your GPS unit and click in a waypoint;
3 right?

4 A. That is correct, sir.

5 Q. Then you would make whatever observations of
6 that farm that you could from that position?

7 A. That is correct.

8 Q. And the pages that follow, are these just
9 maps to tell you how to go find that field?

10 A. Yes. Yeah. Maps of the area.

11 Q. Because you didn't have GPS coordinates and
12 you needed some road maps to get to where you were
13 going?

14 A. Yes, we needed road maps.

15 MR. WALKER: I may be done or certainly very
16 close to done. I want to take a short break, look at
17 my notes and then the other folks at the table may
18 have questions for you.

19 THE WITNESS: Sure.

20 MR. WALKER: So let's stop for a moment.

21 VIDEOGRAPHER: We're now off the videotape
22 record, the time is 11:03 a.m.

23 (Short Break)

24 VIDEOGRAPHER: We're now back on the
25 videotaped record, the time is 11:14 a.m.

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1 Q. (BY MR. WALKER) Sergeant Tuell, I just have
2 a couple finish up questions here for you.

3 And I want to shift to, back, we were
4 looking at documents; right?

5 A. Yes.

6 Q. I want to go back to your memory, just what
7 you remember sitting here today. We looked through
8 the observations that you or your colleague recorded
9 in Exhibits 3, and Exhibit 4.

10 A. Yes.

11 Q. You remember your testimony about those?

12 A. Yes.

13 Q. Do you have any recollection sitting here
14 today, of having been to any other Cargill farms or
15 Cargill contract grower farms other than the ones
16 we've talked about?

17 A. Not that I recall.

18 MR. WALKER: I don't have any further
19 questions. I'll pass the witness.

20 CROSS EXAMINATION

21 BY MR. MIRKES:

22 Q. Hello, sir. My name is Craig Mirkes, I
23 represent Peterson Farms. I just have a few questions
24 for you today.

25 And you may have done this and I didn't

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1 catch it, will you state your full name for the
2 record.

3 A. It's Christopher Shane Tuell, T-U-E-L-L.

4 Q. Okay. So I see on some of the forms that
5 I've got there appears to be initials in the bottom
6 CST, with a -- you have a pretty particular way of
7 writing your initials.

8 A. Yeah. I'll do a C and then put an S in the
9 middle and then make the swirly at the end into a T.

10 Q. Okay. I just wanted to clear that up, make
11 sure that I was assuming correctly that was you.

12 Did we ever hear what you got your degree in
13 at OSU?

14 A. Bachelor of arts and science.

15 Q. Any specific area of study?

16 A. With a focus on juvenile justice and
17 criminal.

18 Q. Criminal justice?

19 A. Yes.

20 Q. You recalled one incident where a fellow
21 named Bart confronted you or talked to you, do you
22 recall that?

23 A. Yes.

24 Q. When he did confront you or talk to you, how
25 did you identify yourself?

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1 A. We actually told him that we were just there
2 to document photographs for the State. We had no
3 personal interest in anything. And we basically told
4 him that we meant him no harm or anything.

5 Like I said, I can only imagine what it
6 would be like to have my photograph taken at my
7 residence or whatever I'm doing. After we assured him
8 that everything was fine, we were just documenting
9 with photographs, the conversation was quite pleasant
10 and he went on his way and we did, too.

11 Q. And you told him you were in the State of
12 Oklahoma?

13 A. Yes.

14 Q. Did that happen in the State of Arkansas or
15 the State of Oklahoma, if you recall?

16 A. I'm almost positive it was the State of
17 Arkansas, I mean, in my head I can drive there still
18 because we drove so much, but as far as if we passed
19 over into Oklahoma or not, I don't recall.

20 Q. And I'm going to ask you this may seem
21 silly, earlier you made reference to you remembered
22 the route you took, what was the general route when
23 you were heading to the watershed that you guys took.

24 I don't need great detail just kind of main
25 highways.

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1 A. Oh, how we would get into Arkansas? We'd go
2 up 412 and then once we get into Siloam, then, heck,
3 the two highways that are nearly the same depending on
4 which one you take, one's in Oklahoma the other one's
5 in Arkansas, I can't remember the highway number, I
6 apologize, but we would take one of the two highways
7 and head off towards the east and document stuff in
8 that direction.

9 Or if we needed to go to Bentonville or
10 anything up in that area then we'd go up further, and
11 then go off to the west.

12 Q. You would go up 540, you'd go all the way
13 into Springdale, take 540 north and then cut back
14 west?

15 A. Yes. Yes. And I apologize, it's been a
16 while so I don't remember the names of the highway
17 numbers. I should as much as I drove, but I don't.

18 Q. I'm not trying to conduct a memory test.

19 A. That's good.

20 Q. You recalled some sampling activity that you
21 were not a party to, but you were certainly there in
22 the two white vans, you remember that testimony?

23 A. Yes.

24 Q. Do you remember what kind of water bodies
25 you were stopping at?

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1 A. There was one that I recall, that the
2 vehicles actually had to cross a low water, or a low
3 road that actually went through the stream. The exact
4 location of that, I don't recall.

5 There was a couple where they had water
6 testing barrels, I think, setting out. One of them
7 you could see from the roadway, the other you
8 couldn't. But I knew they were going down there to
9 get water samples and if they took any other soil
10 samples or whatever, I don't know.

11 Q. But with respect to the water samples, it
12 was all moving water is your recollection?

13 A. It appeared to be from what I could see.

14 Q. You said that you visited, what you
15 remember, about five locations and that those
16 locations seemed to be predetermined?

17 A. Yes.

18 Q. Did they ask you where you thought they
19 should go to look at any water bodies?

20 A. No, not that I recall.

21 Q. And this is another instance where I note
22 that when you took the two white vans out, you
23 reference that you know you started in Arkansas and
24 you may have come back in to Oklahoma, but you didn't
25 know. But you remembered the route, was that the same

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1 route you took 412?

2 A. When we did the samples?

3 Q. Correct.

4 A. Oh, I don't recall. I know we were in
5 Arkansas and if we traveled over into Oklahoma for
6 samples, I'm not sure. But the route, I don't know.

7 Whenever we would go to take photographs or
8 take waypoints of farmhouses, or any activity, whoever
9 I was teamed up with that day we would take a certain
10 route, we would just travel a certain route. But from
11 what I recall from the sampling team, when I went with
12 them, they were just going by waypoints. So we were
13 just jumping from place to place. So I don't know if
14 there was a specific route that I can recall from
15 that.

16 Q. Also talking about the day that you went out
17 in the white vans, you said that you stayed on the
18 roadway while the sampling team went out and did what
19 they did?

20 A. Yes.

21 Q. How far away would they get from the
22 vehicle?

23 A. A few yards. A lot of the -- from where the
24 water samples were, where it seemed it would be a
25 ditch area and I wouldn't go down in the ditch. One

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1 reason is most of that area had tall grass in it and I
2 just to be honest, I didn't want ticks on me and they
3 were coming back with ticks and stuff like that, and I
4 don't want them.

5 Q. So do you recall them grabbing water samples
6 out of bar ditches?

7 A. Yeah, they were doing stuff like that. And
8 our primary responsibility was to stay and be mindful
9 of the area as they did what they did, so.

10 Q. I want to go back to the very first meeting
11 you had and my understanding through this deposition
12 that that was at the office of Lithochimeia; is that
13 correct?

14 A. That's correct.

15 Q. Do you remember -- do you know who Elizabeth
16 Weatherly is?

17 A. Yes. Yes. She's an officer I work with, or
18 she's on the department.

19 Q. Was she, do you recall if she was an
20 attendee at the first meeting, the same first meeting?

21 A. I'm not sure.

22 Q. If she recalls you being at the same first
23 meeting would that, would you have any reason to
24 dispute that?

25 A. I would not dispute that at all.

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1 Q. Was she, were the group -- I don't know how
2 best to ask this question. Was the information that
3 was provided to one group or was there different
4 sessions or different groups that were maybe provided
5 different sets of information?

6 A. You mean when we would leave to go document
7 stuff or?

8 Q. Specifically at the very first meeting at
9 Lithochimeia's offices?

10 A. No, we were all sitting at a large table,
11 not any different than what we're here today, and it
12 was, we were all given the exact same information.

13 Q. Do you recall pictures, them showing you
14 pictures of spreader trucks?

15 A. Yes. Yes, they did show us some photographs
16 of things of that nature and then there were some
17 aerial shots that we were shown.

18 Q. What kind of photographs do you recall?

19 A. None that I recall. I mean you said
20 spreader trucks, I know that was one of them. I
21 remember seeing aerial photos. Other than that, I
22 don't know.

23 Q. Did they show you pictures of litter piles,
24 or suspected litter piles?

25 A. They could have and if they did, if someone

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1 says they recall seeing them, I wouldn't dispute that
2 at all. I don't recall it.

3 Q. I'm just trying to jog your memory.

4 A. Yeah.

5 Q. I wasn't at the meeting, so I don't know.
6 And I know that was a long time ago and people
7 remember different things.

8 A. Yeah.

9 Q. Do you recall them having any discussion
10 about a covered versus an uncovered litter pile?

11 A. That I do remember.

12 Q. Will you tell me about that, what you
13 remember.

14 A. They for some reason, they were very
15 interested on whether litter piles were out in the
16 open, or whether they were covered. And I guess it
17 had to do with whether they would be protected from
18 the elements, such as rain or not.

19 So, as we were supposed to document any
20 piles that we observed, it was they seemed to be
21 concerned with whether it was covered or not. The
22 specifics or the reasons why, other than just being
23 element, I don't know. But yeah, I do remember that
24 discussion.

25 Q. I know on some of the sheets I've seen, it

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1 seems like the time records are, the time you spent in
2 the watershed area or the time you want to get paid
3 for, was noted on the sheet. Was that the way that
4 you recorded the time you worked or was there another
5 method that you would report your time to Steve or
6 whomever?

7 A. We would generally, if we met at 6:00 a.m.
8 that's when we started, and then we'd go out to the
9 watershed. Some people would be done with their
10 assignment, such as if they had gotten aerial photos
11 and told, get waypoints in these areas and when you're
12 done, if you want to drive around some more and see if
13 you observe anything, feel free, if not, you're done
14 for the day.

15 Others of us had more to do that day, or if
16 we were observing more activity, more spreading, we
17 would stay.

18 But at the end of the day when we were done
19 if we were separate from Steve, we would all meet with
20 him on our own time. Him being my father-in-law, it
21 was a little bit easier.

22 Q. Sure.

23 A. When I was done I would notify him, hey, I'm
24 back, I'm leaving now, I'm done. And so that's how it
25 was to be done. And I'd just go to his house later

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1 that evening, not billing. Wouldn't take in billing
2 for that, but I'd go to his house and give everything
3 to him that evening.

4 Q. So you wouldn't, the only thing I can kind
5 of harken this back to, have you ever gotten a
6 lawyer's bill or seen a lawyer's bill?

7 A. No, I've never gotten a lawyer's bill, well
8 I did get a check for \$54 for being here.

9 Q. Okay. Well, but you never, I guess, really
10 my question is, you didn't really itemize exactly what
11 you did each day, you know, eight hours, time in
12 watershed?

13 A. We did not have a bill sheet, no, that we
14 submitted to Lithochimeia, no.

15 Q. So whenever you went out, I mean, it sounds
16 like the time you went out with Burt Fisher and the
17 sampling team was a different exercise but the time
18 was reported the same?

19 A. Right.

20 Q. By the same method?

21 A. I guess the best way to put it, it would be
22 on our honor, we started at this time and with we
23 ended at this time.

24 Q. We talked about a prank a little bit off the
25 record. I want to ask you about a different prank

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1 that I heard about in the watershed. Did you ever
2 hear about one of the other investigators pulling a
3 prank with by use of a dead chicken they found, did
4 you hear anything about that?

5 A. No. One of the attorneys was talking about
6 that earlier today in the hallway, and asked me, well
7 I heard that, you, specifically me, had done something
8 with a chicken and I don't recall that.

9 There was dead chickens we'd come across on
10 the road, but I don't know if someone got me mixed up
11 thinking it was me that had done something with a dead
12 chicken, but I don't recall doing anything with a dead
13 chicken.

14 Q. The name I recall was not you, but?

15 A. Okay.

16 Q. I meant to ask the question yesterday and I
17 didn't, so I was wondering if maybe you knew --

18 A. No.

19 Q. -- something about it? When you spent the
20 time in the watershed, do have you any specific
21 recollection of documenting or investigating Peterson
22 contract grower farms?

23 A. Coming across them or just specifically go
24 after Peterson, is that what you're saying?

25 Q. Do you remember seeing Peterson signs when

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1 you were in the watershed?

2 A. Oh, yes. Yes.

3 Q. Do have you any specific recollection as you
4 sit here today of any observations you made at those
5 locations where there was a Peterson sign?

6 A. Not off the top of my head, no, sir.

7 Q. Is it fair to say that all the observations
8 that you did make at any Peterson contract grower farm
9 would have been noted in your reports?

10 A. That is correct.

11 Q. Based upon your knowledge of the laws as you
12 know them, did you see any illegal activity at any of
13 the Peterson contract grower farms that you did visit?

14 A. No.

15 Q. Did you see any violations of the law with
16 respect to the litter that was sourced from a Peterson
17 contract grower farm?

18 A. Can I add a little bit to that, if you don't
19 mind?

20 Q. Feel free.

21 A. Okay.

22 Q. Well, why don't you answer my question first
23 and then I'll allow you to.

24 A. The answer would be, I don't know.

25 Q. Okay.

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1 A. And the reason is, is I don't know what the
2 law is on litter. I don't know if someone is allowed
3 to spread only certain of times of the year or if
4 they're allowed to dispose of litter in a field, only
5 so many times. I don't know any of that.

6 We were just told to document any activity
7 or observe any piles, stuff like that. So any
8 violations of the law, I don't know if we saw that or
9 not because I don't know what the law would be on
10 those.

11 Q. Did ever have an occasion where Dr. Fisher
12 met you in the watershed and discussed algae growth in
13 water bodies and what that meant?

14 A. No, not that I recall.

15 Q. Okay.

16 MR. MIRKES: I have no further questions.
17 I'll pass the witness. Thank you, sir.

18 THE WITNESS: Thank you.

19 CROSS EXAMINATION

20 BY MR. CHADICK:

21 Q. Sergeant Tuell, we met earlier, Buddy
22 Chadick, and I'm representing the Georges.

23 What is our Exhibit number now, 6? This
24 will be Exhibit Number 6 which consists of, I believe
25 four pages, and beginning with Bates number

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1 OK-PL-0003047.

2 The second one is 3073, the third one is
3 3101, and the fourth one is 3104.

4 A. Yes, I have all those here.

5 Q. I've reviewed a plethora of State documents,
6 some 6,000, and have identified these four and two
7 other investigative forms where you were present. And
8 they were George's grower farms.

9 If you'll look at Exhibit 6, just go through
10 those documents. Can you tell me if there's any
11 inappropriate activity in any four of those, with any
12 four of those farms?

13 MR. WOMACK: Object to the form. You can
14 answer.

15 THE WITNESS: I could tell you I could view
16 each interested party in all these and I don't think I
17 could tell anyone that I would ever have seen anything
18 inappropriate, that's to assume that I would know what
19 was inappropriate. And I don't know and I hate to
20 be --

21 Q. No. That's okay.

22 A. -- vague like that but, I mean, really in
23 respect to the litter question, I wouldn't know what
24 would be appropriate or inappropriate, so.

25 Q. If you were to have seen a litter truck

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1 dumping a load of litter in the Illinois River?

2 A. Like directly into the river?

3 Q. Yes. That would be inappropriate, wouldn't
4 it?

5 MR. WOMACK: Object to form.

6 THE WITNESS: Well then, with my apologies,
7 yes, I would probably say that would be pretty
8 suspect.

9 Q. (BY MR. CHADICK) On those four farms that
10 you have there, you don't see anything unusual in your
11 inspections, do you?

12 A. I do not, sir.

13 Q. In looking at the forms, do you recall or
14 have a recollection of anything else about those
15 farms, other than what's presented on that form
16 itself?

17 A. I do not, sir.

18 Q. If we could, this will be Exhibit 7
19 consisting of two pages, OK-PL-0005567 and 5568.

20 This is a different type form?

21 A. Yes.

22 Q. Is there any reason that you changed to this
23 type form?

24 A. You know, I don't know. I don't know if
25 there was a specific reason why they changed. These

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1 were just provided to us at one point.

2 Q. Would you read for me your notes, or is that
3 your writing or is that?

4 A. No, actually, apparently I did go with Liz
5 Weatherly on at least one occasion. And this is her
6 handwriting, so that would have meant that I was
7 driving and she was the documenter.

8 Q. And can you, if you will please, read her
9 notes, notation?

10 A. Her note on OK-PL--5567, which is dated June
11 14th of '06, she's got two photo frame documentation
12 of 5425 and 5426, two spreaders, liquid trucks from
13 waypoint five, return to George's commercial egg plant
14 at waypoint six.

15 And this document is a representative of
16 waypoint six.

17 Q. I'm sorry, which one 5567?

18 A. Okay. First one, 5567.

19 Q. Okay. Where is waypoint five?

20 A. It's not provided to me here, so I don't
21 know.

22 Q. There's no indication of the grower on this
23 form. Was this from the highway?

24 A. Where we observed this?

25 Q. Yes.

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1 A. It would have been from a public roadway.

2 Q. Where was the George's truck?

3 A. It was -- there were two liquid spreader
4 trucks from waypoint five.

5 Q. Okay.

6 A. So that the waypoint five, I'm going to
7 assume, that document was not provided to me, I've got
8 waypoint six and waypoint seven here. I do not have
9 waypoint five to view. But just to assume, waypoint
10 five would have been an area where that vehicle would
11 have been spreading.

12 And it returned to George's commercial egg
13 plant to waypoint six, which is this document.

14 Q. Okay. Did you follow it to the egg plant?

15 A. Yes. This is, the egg plant would be
16 representative of this latitude and longitude
17 waypoint.

18 Q. What did it do? What did the trucks do at
19 the egg plant?

20 A. If you're familiar with that egg plant.

21 Q. I'm not. Do you know where that's located?

22 A. Yeah. I do.

23 Q. Could you tell me what that is?

24 A. Address, I don't.

25 Q. Okay. Sorry. Just give me the general

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1 location.

2 A. But it -- you can only go so far into that,
3 it's a huge complex. And from the public roadway once
4 the trucks or any vehicle that enters that property,
5 once it goes onto that property, who knows what
6 happens there.

7 And I don't even know how they fill those
8 liquid trucks, I mean, you can't see from where, from
9 the public roadway. But you know if you spent any
10 time documenting any of this activity, you know what
11 it is, just because, and I don't mean to offend anyone
12 here that's representative of anyone, but the smell is
13 awful. I was a homicide detective for four years and
14 there was times we'd joke around in that respect, I'm
15 sorry, we'd rather stand over a dead body with that
16 smell than this smell. It was an awful smell.

17 So you knew what was in the vehicles but how
18 they filled them, I don't know.

19 Q. Is it your assumption that they return the
20 spreader trucks to the egg plant, empty and fill them
21 at the egg plant?

22 A. That's what we would assume because once
23 they would leave there they would go continue back to
24 a field.

25 Q. Okay. And I notice that you have, which

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1 one, I believe it's 5568, oh, read that note down
2 at the bottom for me, please.

3 A. Of 5568?

4 Q. Yes, sir.

5 A. It says, "Note, these two trucks did not go
6 through any type of decontamination process when they
7 returned to the egg plant and refilling from
8 spreading."

9 Q. And how do you know that they didn't go
10 through a decontamination process?

11 A. Once they were on the egg plant property
12 maybe they did. But prior to returning to the egg
13 plant, they didn't go to anything to get washed off
14 before going back into the egg plant.

15 Q. Do you see that as being significant
16 decontamination?

17 A. I don't know if it's significant or not. I
18 don't know the, I mean I don't -- I don't know if
19 these trucks should be decontaminated prior to or not.
20 That was a documentation that Liz put on the bottom of
21 that.

22 Q. Do have you any recollection of any other
23 George's growers or egg plant of George's that you
24 might have inspected other than these six?

25 A. Of the six, six George's?

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1 Q. Well, actually, I'm referring to the six
2 inspection sheets. Do you recall any other inspection
3 that you did of a George's plant or a George's grower?

4 A. No, sir, other than the six documents that
5 you've provided here, no, I don't recall.

6 Q. Okay.

7 MR. CHADICK: That's all I have.

8 MR. WALKER: Your exhibits got marked.

9 MR. CHADICK: Yes.

10 MR. WOMACK: Okay. I'll just have a few
11 questions and I think some of them have been answered
12 actually, but I want to clear things up here.

13 CROSS EXAMINATION

14 BY MR. WOMACK:

15 Q. Several of the attorneys here have asked you
16 if you observed anything illegal or unlawful while you
17 were out observing these poultry operations. I
18 believe you have testified that you did not and then I
19 think you clarified that you did not know what was
20 illegal or unlawful; is that a correct representation
21 of your testimony?

22 A. Yes, that's correct.

23 Q. Would it be fair to say that if you did
24 observe illegal and unlawful things during your
25 observation, you would not have known if they were

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1 illegal or unlawful?

2 MR. WALKER: Object to the form.

3 MR. MIRKES: Object.

4 THE WITNESS: That's true.

5 Q. (BY MR. WOMACK) Okay. I believe you also
6 testified that you did not report anything that you
7 saw to any law enforcement agency; is that correct?

8 A. That's correct.

9 Q. Is your understanding that the Attorney
10 General of the State of Oklahoma is the highest
11 ranking law enforcement official in the State?

12 A. That's correct.

13 Q. Would it be fair to say that by submitting
14 your observations to the scientists working on behalf
15 of the Attorney General that they were submitted in
16 some form to the Attorney General?

17 MR. WALKER: October to the form.

18 MR. MIRKES: Object to the form.

19 THE WITNESS: It was our understanding that
20 it was reaching that level, yes.

21 Q. (BY MR. WOMACK) Okay. Thank you. Now there
22 was a line of questioning a little while back about
23 whether it was important for you to, when you're doing
24 your work, for instance in the homicide department, to
25 know the crime that you are investigating. And that

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1 you did not know that, necessarily the specific laws
2 at issue in this case, and it was basically different
3 from your normal work as a police officer, do you
4 recall that testimony, sir?

5 A. I do.

6 Q. Okay. I believe you also testified that you
7 were not allowed to, did not have an opportunity to
8 use your individual judgment in regards to your
9 observations for the work done in this case?

10 A. Right.

11 Q. Okay. Do you have any reason to believe
12 that the various scientists and folks of that nature
13 who received this info needed your individual judgment
14 to discern your notes?

15 MR. WALKER: Object to the form.

16 Foundation.

17 MR. MIRKES: Object to the form.

18 THE WITNESS: I don't believe they needed my
19 input on anything.

20 Q. (BY MR. WOMACK) Okay. Is it your belief
21 that you did the job assigned to you?

22 A. I do, yes.

23 Q. Okay. I want to go back real quick to, and
24 I don't know what exhibit number this ended up having,
25 it is the Bates stamp that I'm specifically going to

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1 refer to is OK-PL-0004890.

2 A. It's going to be Exhibit Number 3.

3 Q. Is that Exhibit Number 3? Thank you, sir.

4 This was a -- there was a discussion about the Rucker
5 farm. And I believe that you agreed with the question
6 asked that you could not say whether this litter came
7 from the Rucker farm; is that correct?

8 A. That's correct.

9 Q. Is it fair to say that you can't say that it
10 did not come from the Rucker farm either?

11 A. That's correct.

12 Q. Okay. You said something interesting just
13 now or just earlier here regarding the smell, the
14 odors you encountered while you're out doing this
15 work, the odor of the chicken waste. Now obviously
16 you work in the homicide department, you've been
17 around dead bodies; correct?

18 A. That's correct.

19 Q. And is it fair to say that dead bodies,
20 decomposing bodies have an odor?

21 A. They do.

22 Q. Unpleasant odor at that?

23 A. Very.

24 Q. I believe you said you guys when you were
25 out, by you guys I mean the other folks who were doing

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1 this task, as well, would sometimes joke that you
2 would rather be smelling a dead body than the chicken
3 waste?

4 A. Yes, at times.

5 MR. WALKER: Object to the form.

6 MR. CHADICK: Form.

7 Q. (BY MR. WOMACK) Is it fair to say that in
8 your opinion, that all joking aside, that the chicken
9 waste does have an odor that you find more unappealing
10 than the smell of decomposing bodies?

11 MR. WALKER: Object to form.

12 MR. MIRKES: Object to the form.

13 THE WITNESS: As morbid as it sounds, yes,
14 at times, it does have an odor that's seems to be
15 worse.

16 Q. (BY MR. WOMACK) And this will be my last
17 question here, I believe. I believe you testified at
18 one point that prior to doing this investigation you
19 went tubing in the Illinois River watershed?

20 A. Yes.

21 Q. Is it safe for me to assume that you
22 probably went tubing in the Illinois River somewhere
23 around Tahlequah?

24 A. Yes, it was actually in Tahlequah.

25 Q. Actually in Tahlequah?

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1 A. Thunderbird I believe it was.

2 Q. Okay. And that would be one of the
3 outfitters there.

4 Now during the course of your investigation,
5 you had opportunity to observe some of these poultry
6 operations and the ground application of poultry
7 waste?

8 MR. MIRKES: Object to form.

9 Q. (BY MR. WOMACK) Is that correct?

10 A. Yes.

11 Q. Okay. Let me ask you this, based on what
12 you've seen in the course of your investigation here
13 and the work you did here, if one of your buddies
14 called you up this summer and said let's go float the
15 Illinois River, would you pass on that invitation or
16 would you still go?

17 A. Actually I, and no offense to anyone here,
18 actually I would probably pass on it.

19 Q. Okay. And I take it that would be that
20 we've discussed I believe on the record your -- you've
21 had child care issues today with it being Good Friday,
22 so I think it's fair to assume you have children, but
23 would it be fair to say you probably would not take
24 your children there, as well?

25 A. No, I would not.

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1 MR. WOMACK: Okay. I have no further
2 questions.

3 MR. WALKER: I have a couple of follow-up
4 questions.

5 THE WITNESS: Sure.

6

7 REDIRECT EXAMINATION

8 BY MR. WALKER:

9 Q. You haven't been to the Illinois River for
10 eight years?

11 A. It's been quite some time. The last time,
12 like I said, the last time I went was sometime shortly
13 after I got on the police department.

14 Q. I think you said 2000 or 2001?

15 A. Yeah, it was around 2001, 2002, somewhere
16 around in there.

17 Q. And you did your work in this case in 2005;
18 right?

19 A. That's correct.

20 Q. Okay. And so before you did your work in
21 this case, did you have any plans to go back to the
22 Illinois River?

23 A. Since the last time I went, I have not had
24 any plans and most of that's do to the fact that when
25 I first got on the department for years I worked

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1 graveyard, so during the day I was sleeping.

2 And then now, I've got a family. I just
3 don't have time to go off and float the Illinois.

4 Q. A moment ago counsel asked you a question
5 and some follow-up questions about whether you saw
6 anything illegal or not and, you know, he asked the
7 question in such a way that I want to be sure that the
8 record's clear.

9 You do have an understanding of what some of
10 the laws of Oklahoma are, don't you?

11 A. Yes.

12 Q. Beyond just homicide law; right?

13 A. Yes.

14 Q. You've been a patrol officer?

15 A. Yes.

16 Q. And you -- there are probably a lot of laws
17 that you know about; correct?

18 A. That's correct, yes.

19 Q. Okay. And that's all my question is about,
20 is about the laws you do know.

21 A. Right.

22 Q. I'm not asking about the laws you don't
23 know, that's not, you know, very fair.

24 A. Sure.

25 Q. I just want to ask about the laws you do

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1 know. Okay. Based on the laws you do know, over the
2 course of this investigation, did you see any illegal
3 activity?

4 A. No.

5 Q. And counsel a moment ago asked you about
6 Exhibit 3, and can you put that exhibit in front of
7 you again, and I want to ask you about the first page.

8 Just to be clear, you don't know where the
9 litter came from that you observed documented at
10 waypoint seven; right? It's the first page of
11 exhibit --

12 A. On --

13 Q. I'm sorry.

14 MR. MIRKES: It's the first page of waypoint
15 five.

16 Q. (BY MR. WALKER) The third page of Exhibit
17 3.

18 A. OK-PL-4890?

19 Q. That's correct. That's correct.

20 A. Okay. No, according to this page I do not
21 have a starting point for a full spreader truck. I
22 just have a waypoint for, two waypoints, one for
23 observing the full spreader truck spreading, and then
24 an empty, that empty truck returning to waypoint seven
25 to the Rucker farm.

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1 Q. So for all you know, somebody could have
2 been borrowing Rucker's truck and just driven it back
3 to give it to them; right?

4 A. For all I know at that time, yes, sir.

5 MR. WALKER: I don't have any further
6 questions.

7 MR. WALKER: Actually, I would like to do
8 one thing which is just to make an exhibit.

9 MR. WOMACK: That's fine, subject to the
10 Social Security number being redacted.

11 MR. WALKER: It had been redacted.

12 MR. WOMACK: It has been redacted. That's
13 fine. Read and sign.

14 THE WITNESS: We'll do that, too. Can you
15 mark this as, what's the next one, I can't read that
16 number. That's a nine. Okay. And I just want to get
17 it authenticated is all with the witness.

18 MR. WOMACK: That's fine. That's fine.

19 Q. (BY MR. WALKER) The court reporter has
20 marked as Exhibit 9, a document that I'd asked you to
21 just confirm. Is that a copy of the two 1099 forms
22 that you brought with you today with the exception of
23 the fact that, we had attempted to redact your Social
24 Security number, we'll redact that, but I think I see
25 the problem. Let's start again with a new 9.

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1 A. Yes, sir.

2 Q. Exhibit 9, is that a copy of the paperwork
3 that you brought with you today?

4 A. Those are exact copies with my Social
5 Security number redacted from both.

6 Q. Okay.

7 MR. WALKER: Thank you. That's all I have.
8 You have an opportunity to review your deposition
9 transcript that the court reporter is going to prepare
10 and if you feel that you need to make corrections you
11 can do so. If you don't care to go through that
12 exercise, the court reporter can just produce the
13 document to the parties and you can waive. What would
14 you like to do?

15 THE WITNESS: I'll waive it.

16 VIDEOGRAPHER: We're now off the videotaped
17 record, the time is 11:51 a.m.

18 (TOTAL TIME ON RECORD 2hrs53mins34secs)

19

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1 CERTIFICATE

2
3 I, SUSAN K. McGUIRE, Certified Shorthand
4 Reporter, do hereby certify that the above-named SHANE
5 TUELL was by me first duly sworn to testify the truth, the whole
6 truth, and nothing but the truth, in the case
7 aforesaid; that the above and foregoing deposition was
8 by me taken in shorthand and thereafter transcribed;
9 that the same was taken the 10th day of April, 2009,
10 in the City of Tulsa, County of Tulsa, State of
11 Oklahoma, pursuant to subpoena, and under the
12 stipulations hereinbefore set out; and that I am not
13 an attorney for nor relative of any of said parties or
14 otherwise interested in the event of said action.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and official seal this 17th day of April, 2009.

17
18
19
20
21

22 _____
23 SUSAN K. McGUIRE, CSR, RPR

24 State of Oklahoma, No. 1594
25